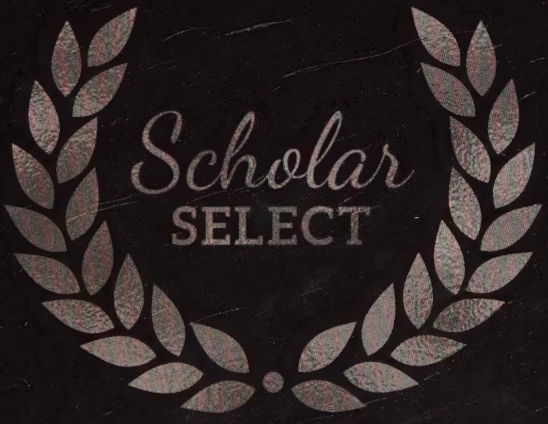
The Criminal Code Of Canada And The Canada Evidence Act

With Their Amendments, Including The Amending Acts Of 1900 And 1901, And Extra Appendices Containing The Imperial Criminal Evidence Act



CANADA, JAMES CRANKSHAW

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The Criminal Code Of Canada And The Canada Evidence Act

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SUPPLEMENT

TO THE

CRIMINAL CODE

SUPPLEMENT

TO THE

CRIMINAL CODE

AND THE

CANADA EVIDENCE ACT

BY

JAMES CRANKSHAW, B. C. L., K. C.,

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BASED UPON THE REVISED STATUTES, 1906, AS AMENDED, AND UPON THE LATEST JURISPRUDENCE

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PREFACE

TO THE SUPPLEMENT.

The *Criminal Code* and the *Canada Evidence Act*,—as originally passed, and from time to time amended,—have, by the Revised Statutes of Canada, 1906, been repealed, and, (with alterations in the arrangement and in the numbering of the sections of each),—have (along with other Federal enactments included in the Author's second edition of his annotated work on the Criminal Law of Canada,—some of which enactments are mentioned below—), been re-enacted as separate chapters of the new Revised Statutes,—the *Adulteration Act* being chapter 133, the *Canada Evidence Act* being chapter 145, the *Criminal Code* being chapter 146, the *Identification of Criminals Act* being chapter 149, the *Ticket of Leave Act* being chapter 150, the *Fugitive Offenders' Act* being chapter 154 and the *Extradition Act* being chapter 155.

This makes it necessary to issue either a new edition of the Author's work, or a supplement thereto; and, as only a little over five years have elapsed since the publication of the Author's second edition, and, in view of the greater time, labor and expense involved in the preparation and publication of a new edition, a Supplement, such as the one now issued, will more expeditiously and economically place, at the disposal of the legal fraternity, the Criminal Law of Canada as it now exists.

Being mainly in the shape of a Concordance,—between the numbering of the sections of the *Criminal Code* and other Acts (as originally enacted and amended to the end of 1901, when the Author's second edition was published), and the numbering of the sections of the corresponding chapters of the New Revised Statutes,—the present Supplement has three columns, the first column giving the old numbering, and the second column giving the new numbering; while the third column shews what has been omitted from, what has been added to and what changes have been made in the law as contained in the Author's second edition.

Where there is no omission, no addition, no change and no amendment,—any particular section of the old law being the same as a section (corresponding therewith) of the new law,—a statement to that effect is made; but, in case of a change in or of an addition to or of an amendment of the law, not only is there a statement to that effect, but the section of the law, as it now stands, is invariably set out in full; and all important judicial decisions, bearing upon the law of any section, and rendered since the publication of the Author's second edition, (as well as some decisions rendered prior to but not cited and annotated in the second edition), are cited and annotated under the sections of the law to which they apply.

In the Appendix, the same system is adopted of concordance between the numbering of the sections of the old Acts, (contained in the Appendices to the Author's second edition), and the numbering of the sections of the corresponding Acts of the new Revised Statutes; and the latest decisions upon the law contained therein are likewise cited and annotated.

Moreover, the Appendix contains,—(besides the *Alien Labor Act*, the *Fugitive Offenders' Act*, the *Extradition Act* and a part of the *Yukon Act*),—the *Money Lenders Act*, the *Adulteration Act*, a recent *Amendment* of the *Adulteration Act*, the *Lord's Day Act*, a *reference* to the *Quebec Sunday Observance Act* (recently passed), a *List* of *Extradition Treaties* between Great Britain and Foreign Countries, and an *Extract* from the Governor General's Proclamation, (of the 10th of June 1907), bringing into force a portion of Part III of the Criminal Code, relating to the Preservation of Peace in the vicinity of Public Works.

J. C.

Montreal, 30th June 1907.

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Crankshaw's Supplement

TO THE

CRIMINAL CODE

2ND EDIT.	REVISED STATUTES 1906 c. 146.	REMARKS
	PRELIMINARY.	
Sec. 1.	Sec. 1. **Short title.**	*Unchanged.*
Sec. 2.	**Commencement of Act.**	*Omitted.*
Sec. 3.	Sec. 2. **Interpretations.** In this Act, unless the Context otherwise requires.	
(*a*)	(1) 'any Act,' or 'any other Act,' includes, etc.	*Unchanged.*
(*b*)	(2) 'Attorney General' means the Attorney General or Solicitor General of any province in Canada in which any proceedings are taken under this Act, and, with respect to the Northwest Territories and the *Yukon Territory*, the Attorney General of Canada;	*Altered as here set forth.*
(*c*)	(3) 'banker' includes, etc.	*Unchanged.*
	(4) 'bank-note' includes all negotiable instruments issued by or on behalf of any person, body corporate, or company carrying on the business of banking in any part of the world, or issued by the authority of the Parliament of Canada, or any governor or other authority lawfully authorized thereto in any of His Majesty's dominions, or by the authority of any foreign prince, or state or government, and intended to be used as equivalent to money, either immediately upon their issue or at some time subsequently.	*Taken from sec. 420 of the old Act.*
(*d*)	(5) 'cattle' includes, etc.	*Unchanged.*
	(6) 'chief constable' includes, etc	(1)

(1) Taken from sec. 575 (4) of the old Act.

2ND EDIT.	REVISED STATUTES 1906	REMARKS

(*e*) (7) 'court of appeal' means and includes,

" (*i*) (*a*) in the province of Ontario, the Court of Appeal for Ontario,

" (*ii*) (*b*) in the province of Quebec, the Court of King's Bench, appeal side,

" (*iii*) (*c*) in the provinces of Nova Scotia, New Brunswick and British Columbia, the Supreme Court in banc,

" (*iv*) (*d*) in the province of Prince Edward Island, the Supreme Court,

" (*v*) (*e*) in the province of Manitoba, the Court of Appeal.

(*f*) in the provinces of Saskatchewan and Alberta, the Supreme Court of the Northwest Territories in banc, until the same is abolished, and thereafter such court as is by the legislature of the said provinces respectively substituted therefor;

(*g*) in the Yukon Territory, the Supreme Court of Canada;

Altered as here set forth.

(8) 'copper coin' includes any coin of bronze or mixed metal and every other kind of coin other than gold or silver; (2)

(9) 'deputy chief constable' includes deputy chief of police, deputy or assistant marshal or other deputy head of the police force of any city, town, incorporated village, or other municipality, district or place, and, in the province of Quebec, the deputy high constable of the district; (3)

(*f*) (10) 'district, county or place'. *Unchanged.* (4)

(*g*) (11) 'document of title to goods' *Unchanged.*

(*h*) (12) 'document of title to lands' *Unchanged.*

(13) 'every one,' 'person,' 'owner,' and other expressions of the same kind include His Majesty and all public bodies, bodies corporate, societies, companies, and inhabitants of counties, parishes, municipalities or other districts in relation to such acts and things as they are capable of doing and owning respectively;

Taken from sec. 3 (t) of the old Act.

(2) Taken from sec. 460 (c) of the old Act.
(3) Taken from sec. 575 (5) of the old Act.
(4) For the meaning of "district" or "county," — in relation to *summary convictions*, — see sec. 705 (c) *post*.

2ND EDIT.	REVISED STATUTES 1906	REMARKS
(*i*)	(14) 'explosive substance'	*Unchanged.*
	(15) 'form' means a form in Part XXV of this Act, and 'section' means a section of this Act.	*Added.*
(*j*)	'Finding the indictment'	*Omitted here.* (5)
(*k*)	'Having possession'	*Omitted here.* (6)
(*l*)	(16) 'Indictment' and 'count'	*Unchanged.* (6*a*)
(*m*)	(17) 'intoxicating liquor'	*Unchanged.* (6*b*)
(*n*)	(18) 'justice'	*Unchanged.*
(*o*)	(19) 'loaded arms'	*Unchanged.*
(*o*¹)	(20) 'military law'	*Unchanged.*
(*p*)	(21) 'municipality'	*Unchanged.*
(*p*¹)	(22) 'newspaper'	*Unchanged.*
(*q*)	(23) 'night' or 'night time,' and 'day time,'	*Unchanged.*
(*r*)	(24) 'offensive weapon' or 'weapon'	*Unchanged.*
	(25) 'Part' means a Part of this Act.	*Added.*
(*s*)	(26) 'peace officer'	*Unchanged.*
(*t*)	'person' 'owner' etc.	*Omitted here.* (7)
	(27) 'public department' includes the Admiralty and War Department, and also any public department or office of the Government of Canada, or of the public or civil service thereof, or any branch of such department or office;	*Taken from sec. 383 (a) of the old Act.*
	(28) 'public stores' includes all stores under the care, superintendence or control of any public department as herein defined, or of any person in the service of such department;	*Taken from sec. 383 (b) of the old Act.*
	(29) 'public officer' includes any inland revenue or	

(5) This clause is converted into section 5 (*a*), *post.*

(6) This clause is converted into 5 (*b*), *post.*

(6*a*) This paragraph is, (by the *Criminal Code Amendment Act* 1907, 6 and 7 Ed. 7, c. 8, — assented to on the 27th April 1907), repealed and re-enacted as follows: — "(16) 'indictment' and 'count' respectively include information, and presentment, as well as indictment, and also any plea, replication or other pleading, any formal charge under section 873A, and any record."

(6*b*) This paragraph is, (by the 6 and 7 Ed. 7, c. 9), repealed and re-enacted as follows: — "(17) 'intoxicating liquor' means and includes any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor a part of which is spirituous or vinous, fermented or otherwise intoxicating, and any such liquor shall be presumed to be intoxicating, if it contains more than two and a half per cent of proof spirits."

(7) And transferred to sec. 2 (13), *ante.*

customs officer, officer of the army, navy, marine, militia, Royal Northwest mounted police, or other officer engaged in enforcing the laws relating to the revenue, customs, trade or navigation of Canada; *Taken from 3 (w) of old Act.*

(*u*) (30) 'prison' *Unchanged.*

(31) 'prize fight' means an encounter or fight with fists or hands, between two persons who have met for such purpose by previous arrangement made by or for them; *Taken from sec. 92 of old Act.*

(*v*) (32) 'property' includes

" (*i*) (*a*) every kind of real and personal property, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods,

" (*ii*) (*b*) not only such property as was originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise,

" (*iii*) (*c*) any postal card, postage stamp or other stamp issued or prepared for issue by the authority of the Parliament of Canada, or of the legislature of any province of Canada, for the payment to the Crown or any corporate body of any fee, rate or duty, and whether still in the possession of the Crown or of any person or corporation;

Unchanged. (7*a*)

(*w*) 'public officer' *Omitted here.* (8)

(*x*) (33) 'shipwrecked person' *Unchanged.*

(34) 'stores' includes all goods and chattels, and any single store or article.

Taken from sec. 38-3 (c) of the old Act.

(*y*) (35) 'superior court of criminal jurisdiction' means and includes,

(*a*) in the province of Ontario, the High Court of Justice for Ontario.

(7*a*) Except that paragraph (*c*) of the new subsection omits the last 3 lines of paragraph (*iii*) of sec. 3 (*c*) of the old Act, which 3 lines are converted into sec. 3, *post*.

(8) And transferred to sec. 2 (29), *ante*.

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(*b*) in the province of Quebec, the Court of King's Bench,
(*c*) in the provinces of Nova Scotia, New Brunswick, and British Columbia, the Supreme Court,
(*d*) in the province of Prince Edward Island, the Supreme Court of Judicature,
(*e*) in the province of Manitoba, the Court of Appeal or the Court of King's Bench (Crown side),
(*f*) in the provinces of Saskatchewan and Alberta, the Supreme Court of the Northwest Territories, until the same is abolished, and thereafter such court as is by the legislatures of said provinces respectively substituted therefor,
(*g*) in the Yukon Territory, the Territorial Court; *Altered as here set forth.*

(*z*) (36) 'territorial division' *Unchanged.*

(*aa*) (37) 'testamentary instrument' *Unchanged.*

(38) 'trade combination' means any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman in or in respect of his business or employment, or contract of employment or service;

Taken from sec. 519 of the old Act

(*bb*) (39) 'trustee' *Unchanged.*

(*cc*) (40) 'valuable security' includes any order, exchequer acquittance or other security entitling or evidencing the title of any person to any share or interest in any public stock or fund, whether of Canada or of any province thereof, or of the United Kingdom, or of Great Britain or Ireland, or of any British colony or possession, or of any foreign state, or in any fund of any body corporate, company or society, whether within Canada or the United Kingdom, or any British colony or possession, or in any foreign state or country, or to any deposit in any savings bank or other bank, and also includes any debenture, deed, bond, bill, note, warrant, order or other security for money or for payment of money, whether of Canada or of any province thereof,

or of the United Kingdom or of any British colony or possession, or of any foreign state, and any document of title to lands or goods wheresoever such lands or goods are situate, and any stamp or writing which secures or evidences title to or interest in any chattel personal, or any release, receipt, discharge or other instrument, evidencing payment of money, or the delivery of any chattel personal;

The last seven lines of clause (cc) of sec. 3 of the old Act, are here omitted, and are converted into a separate section (sec. 4, post) of the new Act.

A lien note is a valuable security; (9) and so is a promissory note. (10)

(*dd*) (41) 'wreck' *Unchanged.*

(*ee*) (42) 'writing' *Unchanged.*

(43) 'in Part XII. and in Parts XXII., XXIII. and XXIV. of this Act 'Part III.' means such section or sections of the said Part as are in force by virtue of any proclamation in the place or places with reference to which the Part is to be construed and applied; and a 'commissioner' means a commissioner under Part III. *Added.*

3. Postal cards and stamps are chattels. — For the purpose of this Act a postal card or any stamp referred to in the last preceding section shall be deemed to be a chattel, and to be equal in value to the amount of the postage rate or duty expressed on its face in words or figures or both. *Taken from the last three lines of clause* (iii) *of sec.* 3 (*r*) *of the old Act.*

4. Value of valuable security. — Valuable security shall, where value is material, be deemed to be of value equal to that of the unsatisfied money, chattel personal, share, interest or deposit, for the securing or payment of which, or delivery or transfer or sale of which, or for the entitling or evidencing title to which, such valuable security is applicable or to that of such money or chattel personal, the payment or delivery of which is evidenced by such valuable security.

(9) R. v. Wagner, 6 Can. Cr. Cas., 113.
(10) R. v. Gordon, 23 Q. B. D., 354.

Taken from the last seven lines of sec. 3 (cc) of the old Act.

5. 'Finding Indictment,' and 'having possession.' —In this Act, unless the context otherwise requires,

(*a*) finding the indictment includes also exhibiting an information and making a presentment;

(*b*) having in one's possession includes not only having in one's own personal possession, but also knowingly

(i) having in the actual possession or custody of any other person, and

(ii) having in any place (whether belonging to or occupied by one's self or not) for the use or benefit of one's self or of any other person.

2. If there are two or more persons, and any one or more of them, with the knowledge and consent of the rest, has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them.

Taken from section 3 (j) and (k) of the old Act.

Sec. 4. Sec. **6. Meaning of expressions in other Acts.** — In every case in which the offence dealt with in this Act relates to the subject treated of in any other Act the words and expressions used herein in respect to such offence shall have the meaning assigned to them in such other Act.

Altered, as here set forth.

4*d* **7. Carnal knowledge.** — *Unchanged.*

5. **Offences against Imperial Statutes.** — *Omitted here.*(11)

6. **Punishments.** — *Omitted.*

THE INTERPRETATION ACT

The old *Interpretation Act* (R. S. C., 1886, c. 1), — extracts from which are given at pages 9 and 10 of the Author's second edition of the Criminal Code, — is repealed, and now replaced by the new *Interpretation Act,* (R. S., 1906, c. 1); and the sections of this new Act more or less applicable to Criminal law and procedure are the following:—

(11) Transferred to sec. 589, *post.*

Sec. 9. *Dominion Acts.* Every Act of the Parliament of Canada shall, unless the contrary intention appears, apply to the whole of Canada.

Sec. 13. *Public Acts.* Every Act shall, unless, by express provision, it is declared to be a private Act, be deemed to be a public Act.

Sec. 17. *Private Acts.* No provision or enactment in any Act of the nature of a private Act shall affect the rights of any person, save only as therein mentioned or referred to.

Sec. 28. *Indictable and non-indictable offences. Construction of Acts.* Every Act shall be read and construed as if any offence for which the offender may be (*a*) prosecuted by indictment, howsoever such offence may be therein described or referred to, were described or referred to as an indictable offence, and (*b*) punishable on summary conviction, were described or referred to as an offence; and all the provisions of the Criminal Code relating to indictable offences, or offences, as the case may be, shall apply to every such offence.

2. Every commission, proclamation, warrant or other document relating to crimnial procedure, in which offences which are indictable offences, or offences, as the case may be, are described or referred to by any names whatsoever shall be read and construed as if such offences were therein described and referred to as indictable offences, or offences, as the case may be. (12)

Sec. 29. *Summary convictions and summary or speedy trials.* Unless the context otherwise requires, a reference in any Act to,—

(*a*) the Summary Convictions Act, shall be construed as a reference to Part XV of the Criminal Code;

(*b*) the Summary Trials Act, shall be construed as a reference to Part XVI of the Criminal Code.

(*c*) the Speedy Trials Act, shall be construed as a reference to Part XVIII of the Criminal Code. (12)

(12) Sections 28 and 29 of the new *Interpretation Act* are taken from secs. 536 and 537 of the old Criminal Code.

Sec. 31. *General Rules.* — In every Act, unless the contrary intention appears.

(*d*) whenever *forms* are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead shall not invalidate them;

(*h*) if the time limited by any Act for any proceeding or the doing of anything under its provisions, expires or falls on a *holiday,* the time so limited shall be extended to, and such thing may be done on the day next following, which is not a holiday;

(*i*) words importing the *masculine* gender include *females;*

(*j*) words in the *singular* include the *plural;* and words in the *plural* include the *singular.*

Sec. 34. *Definitions.* In every Act, unless the context otherwise requires.

(1) '*Act*', as meaning an Act of a legislature includes an ordinance of the Northwest Territories as now or heretofore constituted or of the district of Keewatin or of the Yukon territory.

(3) '*County*' includes two or more counties united for purposes to which the enactment relates.

(4) '*County Court,*' in its application to the province of Ontario, includes '*district court.*'

(6) '*Governor*'; '*Governor of Canada*' or '*Governal General*' means the Governor General for the time being of Canada, or other the chief executive officer or administrator for the time being carrying on the government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated;

(7) '*Governor in Council*' or '*Governor General in Council*' means the Governor General of Canada, or person administering the Government of Canada for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the King's Privy Council for Canada;

(8) '*Great Seal*' means the great seal of Canada.

(9) '*herein*' used in any section shall be under-

stood to relate to the whole Act, and not to that section only.

(10) '*His Majesty*' '*the King*' or '*the Crown*,' or other reference to the Sovereign reigning at the time of the passing of the Act, means the Sovereign of the United Kingdom of Great Britain and Ireland, his heirs and successors;

(11) '*holiday*' includes Sundays, New Year's Day, the Ascension, All Saints' Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the Birthday or day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Victoria Day, Dominion Day, the first Monday in September designated Labor Day, and any day appointed by proclamation for a general fast or thanksgiving;

(15) '*Magistrate*' means a justice of the peace;

(16) '*Month*' means a calendar month;

(18) '*Now*' or '*Next*' shall be construed as having reference to the time when the Act was presented for the Royal Assent;

(19) '*Oath*' includes a solemn affirmation or declaration whenever the context applies to any person and case by whom and in which a solemn affirmation or declaration may be made instead of an oath; and in like cases the expression 'sworn' includes the expression 'affirmed' or 'declared';

(20) '*person*' includes any body corporate and politic, and the heirs executors administrators or other legal representatives of such person according to the law of that part of Canada to which the context extends;

(21) '*proclamation*' means a proclamation under the Great Seal;

(22) '*province*' includes the Northwest Territories, as now or heretofore constituted, the district of Keewatin and the Yukon Territory;

(24) '*shall*' is to be construed as imperative, and '*may*' as permissive;

(27) '*sureties*' means sufficient sureties and the expression '*security*' means sufficient secur-

ity; and whenever these words are used one person shall be sufficient therefor, unless otherwise expressly required;

(28) '*two justices*' means two or more justices of the peace assembled or acting together;

(31) '*writing*,' '*written*,' or any other term of like import includes words printed, painted, engraved, lithographed, or otherwise traced or copied.

Sec. **36.** '*Telegraph*.' The expression 'telegraph' and its derivatives, in any Act of Parliament of Canada, or in any Act of the legislature of any province now forming part of Canada, passed before such province entered into the Union, on any subject which is within the legislative powers of the Parliament of Canada, shall not be deemed to include the word '*telephone*,' or its derivatives.

CRIMINAL CODE (resumed)

PART I.

GENERAL.

APPLICATION OF THIS ACT.

Sec. 983-2. Sec. **8. Not to affect His Majesty's forces.** —

Unchanged.

Sec. 983-1. Sec. **9. Scope of Act.** — Except in so far as they are inconsistent with the Northwest Territories Act and amendments thereto as the same existed immediately before the first day of September 1905, the provisions of this Act extend to and are in force in the provinces of Saskatchewan and Alberta, the Northwest Territories, and, except in so far as inconsistent with the Yukon Act, the Yukon Territory.

Altered, as here set forth.

APPLICATION OF THE CRIMINAL LAW OF ENGLAND.

Sec. **10. To Ontario.** The criminal law of England as it existed on the seventeenth day of September 1792, in so far as it has not been repealed by

any Act of the Parliament of the United Kingdom having force of law in the province of Ontario, or by any Act of the Parliament of the late province of Upper Canada, or of the province of Canada, still having force of law, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected by any such Act shall be the criminal law of the province of Ontario. *Added.*

Sec. **11.** **To British Columbia.** The criminal law of England as it existed on the nineteenth day of November, one thousand eight hundred and fifty eight, in so far as it has not been repealed by any ordinance or Act — still having the force of law — of the colony of British Columbia, or the colony of Vancouver Island, passed before the union of the said colonies or of the colony of British Columbia passed since such union, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected by any such ordinance or Act, shall be the criminal law of the province of **British Columbia.** *Added.*

Sec. **12.** **To Manitoba.** — The Criminal law of England, as it existed on the fifteenth day of July one thousand eight hundred and seventy, in so far as it is applicable to the province of Manitoba, and in so far as it has not been repealed, as to the Province, by any Act of the Parliament of the United Kingdom, or by this Act or any other Act of the Parliament of Canada, and as altered, varied, modified or affected, as to the Province, by any such Act, shall be the criminal law of the province of **Manitoba.** *Added.*

EFFECT OF ACT ON REMEDIES.

Sec. 534. Sec. **13.** **Civil Remedy not suspended.** *Unchanged.*

Sec. 535. Sec. **14.** **Distinction between felony and misdemeanor abolished.** *Unchanged.*

Sec. 933. Sec. **15.** **Offences punishable under more than one Act.** — Where an act or omission constitutes an

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offence punishable on summary conviction or indictment, under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of such Acts or at common law, but shall not be liable to be punished twice for the same offence. *Changed, as here set forth.*

JUSTIFICATION OR EXCUSE.

Sec. 7. Sec. 16. **Common law rule in force.** *Unchanged.*
Sec. 8. **General Rule.** *Omitted.*
Sec. 9. Sec. 17. **Children under seven.** *Unchanged.*
Sec. 10. Sec. 18. **Children between seven and thirteen.** No person shall be convicted of an offence by reason of an act or omission of such person, when of the age of seven but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong.
Unchanged in the wording of the section but having in the heading or margin the word "thirteen" for "fourteen."

A charge of perjury cannot be sustained against a boy under 14, without proof of guilty knowledge by him of wrong doing. (1)

Sec. 11. Sec. 19. **Insanity.** *Unchanged.*
Sec. 12. Sec. 20. **Compulsion by threats.** *Unchanged.*
Sec. 13. Sec. 21. **Compulsion of wife.** *Unchanged.*
Sec. 14. Sec. 22. **Ignorance of the law.** *Unchanged.*
Sec. 15. Sec. 23. **Execution of sentence.** *Unchanged.*
Sec. 16. Sec. 24. **Execution of process.** *Unchanged.* (2)
Sec. 17. Sec. 25. **Execution of warrants.** *Unchanged.* (2)
Sec. 18. Sec. 26. **Execution of erroneous sentence or process.**
Unchanged as now corrected by the 6 and 7 Ed. 7, c. 8.

A warrant affords absolute justification to the officer executing it, if it has been issued by competent authority, and is valid on its face, although the warrant may in fact be bad and although it be set aside by reason of a failure to comply with legal requirements. (3)

(1) R. v. Carvery, 11 Can. Cr. Cas., 331
(2) Except that each of these sections is divided into two paragraphs.
(3) Sleeth v. Hurlbert, 3 Can. Cr. Cas., 197.

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Sec. 19. Sec. **27. Sentence or process without jurisdiction.** *Unchanged.*

Sec. 20. Sec. **28. Arresting the wrong person.** *Unchanged.*

Where a peace officer would be justified by virtue of this section in arresting a person without a warrant, the justification will extend to an arrest in respect of which he held a warrant which was insufficient because of the misnomer of the person intended to be charged. (4)

Sec. 21. Sec. **29. Irregular warrant or process.** *Unchanged.*

Sec. 22. Sec. **30. Arrest of suspect by peace officer.** *Unchanged.*

Sec. 23. Sec. **31. Persons assisting peace officer.** *Unchanged.*

Sec. 24. Sec. **32. Arrest of persons found committing certain offences.** *Unchanged.*

Sec. 25. Sec. **33. Arrest after commission of certain offences.** *Unchanged.*

Sec. 26. Sec. **34. Arrest of person believed to be committing an offence by night.** *Unchanged.*

Sec. 27. Sec. **35. Arrest by peace officer of person found committing any offence.** *Unchanged.*

Sec. 28. Sec. **36. Arrest of persons found committing any offence at night;** and **Arrest by peace officer of any person he finds loitering by night.** *Unchanged.*

Sec. 29. Sec. **37. Arrest during flight.** *Unchanged.*

Sec. 30. Sec. **38. Statutory power of arrest.** *Unchanged.*

Sec. 31. Sec. **39. Force used in executing warrants, and in making arrests.** *Unchanged.*

Sec. 32. Sec. **40. Duty of persons executing warrants, etc.** *Unchanged.*

Sec. 33. Sec. **41. Peace officer preventing escape.** *Unchanged.*

Sec. 34. Sec. **42. Private person preventing escape.** *Unchanged.*

Sec. 35. Sec. **43. Preventing escape in other cases.** *Unchanged.*

Sec. 36. Sec. **44. Preventing escape or rescue of arrested per-**

Sec. 37. Sec. **45. son.** *Unchanged.*

Sec. 38. Sec. **46. Preventing breach of the peace.** *Unchanged.*

Sec. 39. Sec. **47. Arrest in such case.** *Unchanged.*

Sec. 40. Sec. **48. Suppression of riot by magistrate.** *Unchanged.*

Sec. 41. Sec. **49. Suppression of riot by persons commanded thereto.** *Unchanged.*

Sec. 42. Sec. **50. Suppression of riot by persons apprehending serious mischief.** *Unchanged.*

Sec. 43. Sec. **51. Protection of persons subject to military law.** *Unchanged.*

(4) R. v. Sabeans, 7 Can. Cr. Cas., 498.

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Sec. 44.	Sec. 52. **Using force to prevent the commission of certain offences.**	*Unchanged in effect.*
Sec. 45.	Sec. 53. **Self defence against unprovoked assault.**	*Unchanged, in effect.*
Sec. 46.	Sec. 54. **Self defence against provoked assault.**	*Unchanged, in effect.*
Sec. 47.	Sec. 55. **Prevention of insulting assault.**	*Unchanged, in effect.*
Sec. 48.	Sec. 56. **Defence of moveable property against trespasser; and assault by trespasser.**	*Unchanged, in effect.*
Sec. 49.	Sec. 57. **Defence of moveable property with claim of right.**	*Unchanged.*
Sec. 50.	Sec. 58. **Defence without claim of right.**	*Unchanged.*
Sec. 51.	Sec. 59. **Defence of dwelling house.**	*Unchanged.*
Sec. 52.	Sec. 60. **Defence of dwelling house at night.**	*Unchanged.*
Sec. 53.	Sec. 61. **Defence of real property.**	*Unchanged, in effect.*
Sec. 54.	Sec. 62. **Assertion of right to house or land.**	*Unchanged.*
Sec. 55.	Sec. 63. **Correction of child by force.**	*Unchanged.*

The authority of a school teacher to chastise a pupil is to be regarded as a delegation of parental authority. (5)

A school teacher who inflicts upon a pupil unnecessarily severe chastisement is criminally responsible for the excess of force used, although the punishment inflicted occasioned no permanent injury and was inflicted without malice. (6)

Sec. 56.	Sec. 64.	**Use of force by master of a ship for maintaining discipline.**	*Unchanged.*
Sec. 57.	Sec. 65.	**Surgical operations.**	*Unchanged.*
Sec. 58.	Sec. 66.	**Excessive force.**	*Unchanged.*
Sec. 59.	Sec. 67.	**Consent to death.**	*Unchanged.*
Sec. 60.	Sec. 68.	**Obedience to "de facto" law.**	*Unchanged.*

PARTIES TO OFFENCES.

Sec. 61.	Sec. 69.	**Principals.**	*Unchanged.*
Sec. 62.	Sec. 70.	**Person counselling an offence afterwards committed is a principal.**	*Unchanged.*
Sec. 63.	Sec. 71.	**Accessory after the fact.**	*Unchanged.*
Sec. 64.	Sec. 72.	**Attempts.**	*Unchanged.*

(5) R. v. Robinson, 7 Can. Cr. Cas., 52.

(6) R. v. Gaul, 8 Can. Cr. Cas., 178.

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PART II.

OFFENCES AGAINST PUBLIC ORDER, INTERNAL AND EXTERNAL

INTERPRETATION.

Sec. 76. Sec. 73. **As to information illegally obtained or communicated.** *Unchanged.*

TREASON AND OTHER OFFENCES AGAINST THE KING'S AUTHORITY AND PERSON.

Sec. 65. Sec. 74. **Treason, — its definition, and Punishment.** *Unchanged, in effect.*

Sec. 66. Sec. 75. **Treasonable Conspiracy. Overt act.** *Unchanged.*

Sec. 67. Sec. 76. **Accessory after the fact to treason.** *Unchanged.*

Sec. 68. Sec. 77. **Levying War, by subject of a State at peace with His Majesty, and Subjects assisting same.** — Every subject or citizen of any foreign State or country at peace with His Majesty, who,—

(*a*) is or continues in arms against His Majesty within Canada; or

(*b*) commits any act of hostility therein; or

(*c*) enters Canada with intent to levy war against His Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death; and

every subject of His Majesty, who, —

(*a*) within Canada levies war against His Majesty in company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or

(*b*) enters Canada in company with any such subjects or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or

(*c*) with intent to aid and assist, joins himself to any person who has entered Can-

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ada, with intent to levy war against His Majesty, or to commit any such offence in Canada;

.—is guilty of an indictable offence, and liable to suffer death.

Unchanged except as here set forth.

Sec. 69. Sec. **78. Treasonable Offences.** — *Unchanged, in effect.*

There is nothing in the Imperial *Naturalization Act, 1870,* which legalizes an act which would have been a crime before the statute; therefore, a person, who becomes naturalized in a foreign country under such circumstances that before the statute he would have been guilty of treason, is not relieved by the statute from the consequences of his act. Nor can an act of treason give any rights, by virtue of the statute, to the person guilty of the treasonable act; and therefore, if war has broken out between Great Britain and another country, a British subject commits an act of treason by becoming naturalized in the belligerent country; he is not thereby protected from the consequences of the commission of subsequent treasonable acts. (1)

Where an indictment for treason alleged that the prisoner adhered to the enemies of the late Queen without the realm, it was held to be good. (2)

Sec. 70. Sec. **79. Conspiracy to intimidate a Legislature.** *Unchanged.*

Sec. 71. Sec. **80. Assaults upon the King.** *Unchanged.*

Sec. 72. Sec. **81. Inciting to Mutiny.** *Unchanged.*

Sec. 73. Sec. **82. Persuading or assisting soldiers or sailors to desert.** *Unchanged, in effect.*

Sec. 74. Sec. **83. Resisting execution of warrant to search for deserters.** *Unchanged.*

Sec. 75. Sec. **84. Persuading or assisting militiamen or Royal N. W. Mounted Policemen to desert.** *Unchanged.*

INFORMATION ILLEGALLY OBTAINED OR COMMUNICATED.

Sec. 77. Sec. **85. Wrongfully obtaining information by entering fortress, etc.**

Sec. 78. Sec. **86. Communicating information lawfully or unlawfully obtained.** *Unchanged in effect.*

UNLAWFUL ASSEMBLIES AND RIOTS.

Sec. 79. Sec. **87. Definition of Unlawful Assembly.** *Unchanged.*

(1) R. v. Lynch 72 L. J. K. B., 107; [1903], 1 K. B., 144.
(2) *Ib.*

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Sec.	80.	Sec.	**88. Definition of Riot.**	*Unchanged.*
Sec.	81.	Sec.	**89. Punishment of Unlawful Assembly.**	*Unchanged.*
Sec.	82.	Sec.	**90. Punishment of Riot.**	*Unchanged.*
Sec.	83.	Sec.	**91. Reading the Riot Act.**	*Unchanged.*
Sec.	"	Sec.	**92. Preventing Proclamation.**	*Unchanged.* (3)
Sec.	84.	Sec.	**93. Duty of officers, if rioters do not disperse.**	*Unchanged.*
Sec.	140.	Sec.	**94. Neglect of peace officer to suppress riot.**	*Unchanged in effect.*
Sec.	141.	Sec.	**95. Neglect to aid peace officer thereat.**	*Unchanged.*
Sec.	85.	Sec.	**96. Riotous destruction of property.**	*Unchanged.*
Sec.	86.	Sec.	**97. Riotous injury or damage to property.**	*Unchanged.*
			UNLAWFUL DRILLING.	
Sec.	87.	Sec.	**98. Prohibition of assemblies for drilling** and punishment of persons present thereat.	*Unchanged in effect.*
Sec.	88.	Sec.	**99. Being unlawfully drilled,**	*Unchanged.*
			AFFRAYS AND DUELS.	
Sec.	90.	Sec.	**100. Affray defined.**	*Unchanged.*
Sec.	91.	Sec.	**101. Challenge to fight a duel.**	*Unchanged.*
			FORCIBLE ENTRY AND DETAINER.	
Sec.	89.	Sec.	**102. Definitions of forcible entry and forcible detainer.**	*Unchanged.* (4)
Sec.	"	Sec.	**103. Punishment.**	
			PRIZE FIGHTS.	
Sec.	92.		**Definition of prize fight.**	*Omitted here.* (5)
Sec.	93.	Sec.	**104. Challenge to fight a prize fight.**	*Unchanged.*
Sec.	94.	Sec.	**105. Principal in a prize fight.**	*Unchanged.*

(3) Except that sec. 83 of the old Act is divided into two sections (91 and 92) of the new Act.

(4) Except that sec. 89 of the old Act is divided into two sections (102 and 103) of the new Act.

(5) Transferred to sec. 2 (31) *ante*.

Sec. 95. Sec. **106. Attending or promoting a prize fight.** *Unchanged.*

Sec. 96. Sec. **107. Leaving Canada to engage in a prize fight.** *Unchanged.*

An exhibition of fighting with fists, to witness which an admission fee is charged to the public, and at which it is announced that the stake money will go to the contestant who knocks out his opponent in a stipulated number of rounds, is a "prize fight" within section 92, now sec. 2. (31) of the Code; and such an exhibition for gain must be viewed as it was intended to appear to the public; and it is no defence that the participants had merely feigned to fight. (6)

A sparring match with gloves, given merely as an exhibition of skill and without any intention to fight until one is incapacitated, is not a "prize fight." (7)

Sec. 97. Sec. **108. When fight is not a prize-fight.** *Unchanged.*

INCITING INDIANS.

Sec. 98. Sec. **109. Inciting Indians to riotous acts.** *Unchanged.*

Sec. **110. Inciting Indians to commit indictable offence.** Every one who incites any Indians to commit any indictable offence is guilty of an indictable offence, and liable to imprisonment for any term not exceeding five years. *Added.*

EXPLOSIVE SUBSTANCES.

Sec. 99. Sec. **111. Causing dangerous explosions.** *Unchanged.*

Sec. 488. Sec. **112. Attempt to destroy or damage property with explosives.** *Unchanged.*

Sec. 100. Sec. **113. Doing anything with intent to cause an explosion; and making or possessing explosives with intent to endanger life.** *Unchanged.*

Sec. 101. Sec. **114. Making or possessing explosives under suspicious circumstances.** *Unchanged.*

OFFENSIVE WEAPONS.

Sec. 102. Sec. **115. Having offensive weapons for dangerous purposes.** *Unchanged.*

Sec. 103. Sec. **116. Openly carrying offensive weapons so as to cause alarm.** *Unchanged.*

Sec. 104. Sec. **117. Smugglers carrying offensive weapons.** *Unchanged.*

(6) Steele v. Maber, 6 Can. Cr. Cas., 446.
(7) R. v. Littlejohn, 8 Can. Cr. Cas., 212.

THE CUSTOMS ACT

AND

THE INLAND REVENUE ACT.

The old *Customs Act* (R. S. C., 1886, c. 32), and the old *Inland Revenue Act* (R. S. C., 1886, c. 34), — certain sections of which, relating to seizures and forfeitures, are set out at pages 101-106 of Crankshaw's second edition of the Criminal Code, — have been repealed and are now replaced by the new *Customs Act* (R. S., 1906, c. 48), and the new *Inland Revenue Act* (R. S., 1906, c. 51); and the following are some of the sections thereof relating to punishments and forfeitures:

THE CUSTOMS ACT.

Forfeiture of goods unlawfully imported. — Section 13 of the new *Customs Act* provides that no goods shall be unladen from any vessel arriving at any port or place in Canada from any place out of Canada, or be unladen from any vessel having dutiable goods on board brought coastwise, until the entry has been made of such goods and warrant granted for the unlading of the same; and it is provided, by sec. 189, that all goods unladen contrary to the Act shall be seized and forfeited.

Section 22 provides that no goods shall be imported into Canada in any vehicle otherwise than in a railway carriage nor on the person between sunset and sunrise on any day nor at any time on a Sunday or a statutory holiday except under a written permit from a Customs collector and under the supervision of a customs officer, and it is, by sections 192 and 193, declared that all goods imported contrary to the above section and the vehicle, etc., in or with which the same are imported shall be **seized** and **forfeited,** and that any goods brought into Canada in the charge or custody of any person shall be **forfeited,** and may be seized and dealt with accordingly, if the person in charge thereof does not (among other things) come to the Custom House nearest to the point at which he crossed the frontier line or to the station of the officer nearest to such point, if such station is nearer thereto than any Custom House, and there makes a report in writing to the Collector or proper officer of Customs stating the contents of each and every

package and parcel of such goods and the quantities and values of the same.

Sections 206, 215, 219, 227, 254, 259 and 260 of the new *Customs Act* are as follows:—

Sec. **206. Smuggling. — Passing forged invoices, etc.** "If any person smuggles or clandestinely introduces into Canada any goods subject to duty, or makes out or passes or attempts to pass through the Custom House any false, forged or fraudulent invoice, or in any way attempts to defraud the revenue by evading the payment of the duty or of any part of the duty on any goods, such goods, if found may be **seized** and **forfeited**; or, if not found but the value thereof has been ascertained, the person so offending shall forfeit the value thereof as so ascertained; and every such person his aiders and abettors shall, in addition to any other penalty to which he and they are subject for such offence, forfeit a sum equal to the value of such goods, — which sum may be recovered in any court of competent jurisdiction, — and shall further be liable, on summary conviction before two justices of the peace or any other magistrate having the powers of two justices of the peace, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment."

Sec. **215. Possessing goods liable to forfeiture.** "If any two or more persons in company are found together and they or any of them have any goods liable to forfeiture under this Act, every such person having knowledge of the fact is guilty of an indictable offence and punishable accordingly."

Sec. **219. Dealing in goods unlawfully imported.** "If any person knowingly barters, keeps, conceals, purchases, sells or exchanges any goods unlawfully imported into Canada (whether such goods are dutiable or not) or whereon the duties lawfully payable have not been paid, such goods, if found, shall be **forfeited**, and may be **seized**. If such goods are not found, the person so offending shall forfeit the value thereof; and every such person shall, in addition to any other penalty forfeit a sum equal to the value of such goods, which may be recovered in any court of competent jurisdiction, and shall further be liable on summary conviction before two justices of the peace or any magistrate having the powers of two justices of the peace, to a penalty not ex-

ceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year, and not less than one month, or to both fine and imprisonment."

The punishment imposed by this section applies not only to the case where the goods are not found in the possession and keeping of the offender, but also to the case where they are so found; it being apparent that the object of the enactment is to make the person liable to punishment who illegally imports goods without paying duty, whether the goods are found or are not found in his possession or keeping. (8)

Sec. 227. **Gaining access without permission to bonded goods.** "Every person who without the express permission of the proper officer of Customs, by any contrivance gains access to bonded goods in a railway car or to goods in a railway car, upon which goods the Customs duties have not been paid, — or delivers such bonded or other goods shall, for every such offence, be liable to imprisonment for a term not exceeding one year and not less than one month.

Sec. **Forged marks or brands.** "If any person at any time forges or counterfeits any mark or brand to resemble any mark or brand provided or used for the purposes of this Act, or forges or counterfeits the impression of any such mark or brand, or sells or exposes to sale, or has in his custody or possession, any goods with a counterfeit mark or brand, knowing the same to be counterfeit, or uses or affixes any such mark or brand to any other goods required to be stamped as aforesaid, other than those to which the same was originally affixed, — such goods so falsely marked or branded shall be *seized* and *forfeited*, and every such offender and his aiders, abettors and assistants shall, for every such offence, be liable on summary conviction before two justices of the peace, to a penalty of two hundred dollars, — and, in default of payment, to imprisonment for a term not exceeding twelve months and not less than two months." (*This was sec.* 210 *of old Act, now omitted*).

Sec. 254. **Falsifying documents and using documents falsified.** — "Every person who forges, counterfeits, falsifies or uses, when so forged, counterfeited or falsified, any paper or document required under this Act, or for any

(8) O'Grady v. Wiseman, Que. Off. Rep., 9 Q. B., 169; 3 Can. Cr. Cas., 332.

purpose therein mentioned, — whether written, printed or otherwise, — or, by any false statement procures such document knowing the same to be forged, counterfeited or falsified, or forges, counterfeits or falsifies any certificate relating to any oath or declaraiton or affirmation by this Act required or authorized is guilty of an indictable offence."

See sections 259 and 260 of the *Customs Act* for the respective penalties, punishments and *forfeitures* incurred by (*a*) any master or person in charge of any vessel and by every driver or person conducting or having charge of any vehicle who refuses to stop such vessel or vehicle when required by a Customs officer, and (*b*) by any person who offers for sale any goods under pretence of the same having been smuggled.

Although sections 215 and 254, (above quoted) of the *Customs Act* declare that the acts thereby prohibited are indictable offences they provide no punishment. But section 1052 of the Criminal Code, *post*, provides that every person convicted of any indictable offence, for which no punishment is specially provided, shall be liable to imprisonment for five years.

THE INLAND REVENUE ACT.

The following are some of the clauses of the new *Inland evenue Act* (R. S., 1906, c. 51) by which penalties and forfeitures are imposed:—

Sec. 58. **Removal of excisable goods before payment of duty thereon.** — "No goods subject to a duty of excise under this Act, shall be removed from any distillery, malt house, brewery, tobacco manufactory, cigar manufactory, bonded manufactory or other premises subject to excise, licensed as herein provided, or from any warehouse in which they have been bonded or stored, until the duty on such goods has been paid or secured by bond in the manner by law required." And section 116 provides that any goods removed from any distillery, malt house, brewery, tobacco manufactory, cigar manufactory, bonded manufactory, or other premises subject to excise, licensed as provided by the Act, or from a warehouse, before the duty thereon has been paid or secured by bond in the manner by law required, shall be seized and detained by any officer of excise having a knowledge of the fact, and shall be and remain forfeited to the Crown.

Sec. 59. **Removal of dutiable goods in the night.** — "Except under departmental authority in such case specially obtained, no goods subject to a duty of excise under this Act, shall be removed from any distillery, malt house, brewery, tobacco manufactory, cigar manufactory, bonded manufactory, or from a bonding warehouse or other premises licensed as herein provided, between the hours of six o'clock in the afternoon and seven o'clock on the following forenoon"; and section 117 provides that any goods removed in violation of section 59 shall be seized and detained by any officer of Inland Revenue having knowledge of the fact, and shall be and remain forfeited to the Crown.

Sec. 100. **Forfeiture of goods and apparatus of an unlicensed distillery, etc.** (*a*) All grain, malt, raw tobacco and other material in stock, (*b*) all engines, machinery, utensils, worms, stills, mash tubs, fermenting tubs, tobacco presses or knives, (*c*) all tools or materials suitable for the making of stills, worms, rectifying or similar apparatus, (*d*) all spirits, malt, beer, tobacco, cigars and other manufactured articles, which are at any time found in any distillery malt house, brewery, tobacco manufactory, cigar manufactory, bonded manufactory or other premises or place where anything is being done or any working carried on which is subject to excise, and for which a license is required under this Act, but in respect of which no such license has been taken out, shall be liable to be *seized* by any officer of Inland Revenue having a knowledge thereof, and to be *forfeited* to the Crown, and may either be destroyed when and where found, or removed to some place for safe keeping, in the discretion of the seizing officer"; and "all horses vehicles and other appliances which have been or are being used for the purpose of removing any spirits, malt, beer, tobacco, cigars, materials or apparatus used or to be used in the production of any article subject to excise, in violation of this Act, shall likewise be liable to be *seized* by any such officer and to be forfeited to the Crown, and may be dealt with in like manner."

Sec. 102. **Forfeiture of engines, etc., in case of fraud.** — Every steam engine, boiler, mill, still, worm, rectifying apparatus, fermenting tun, mash-tub, cistern, couch-frame, machine, vessel, tub, cask, pipe or cock, with the contents thereof and all stores or stocks of grain, spirits, malt, beer, tobacco, cigars, drugs or other materials or commo-

dities which are in any premises or place subject to excise shall be **forfeited** to the Crown and be dealt with accordingly, if any fraud against the Revenue is committed in any such place or premises or if the owner of any such place, premises, apparatus, goods or commodities or any person employed by him or any person having lawful possession or control of such place, premises, apparatus, goods or commodities is discovered in the act of committing or is convicted of committing any act in or about such place or premises which is declared by this Act to be an indictable offence."

Sec. 103. **Forfeiture of goods for non payment of duty.** "Every article or thing subject to duty under this Act and on which the duty hereby imposed has not been paid at the proper time for paying the same shall be **seized** by any officer of Inland Revenue and shall be **forfeited** to the Crown and dealt with accordingly."

OFFENCES WITH RESPECT TO EXCISE STAMPS, ETC.

See sections 104, 105 and 106 of the new *Inland Revenue Act* for the respective penalties, punishments and **forfeitures** incurred by any person (*a*) who unlawfully uses any stamped, marked or branded packages, barrels or casks or (*b*) who being a vendor of the contents of any labelled, branded, marked or sealed package, etc, fails, so soon as the contents have been removed to obliterate such label, mark, brand or seal, or (*c*) who, except as permitted by the Act, brings into or has in his licensed premises any stamped packages, etc.

Forfeiture of stills, etc. See sec. 109 as to **forfeiture** of all stills, worms, apparatus, etc., in respect of which any penalty is incurred.

Unapproved weights or measures. See sec. 113 for the penalty and **forfeiture** incurred by any one using or permitting the use, except as by the Act otherwise provided, of any unapproved weights or measures.

Breaking Crown's Lock.—Abstracting bonded goods, etc. See sections 114 and 115 for the respective punishments and **forfeitures** incurred by any person, (*a*) who opens or breaks the Crown's lock attached to any apparatus, etc., or abstracts goods in bond, or (*b*) who unlawfully removes bonded goods.

Distilling, brewing or malting; or Manufacturing tobacco or cigars without license. Section 180, sections

204 to 207, sections 237 to 239, and section 338, make every person guilty of an indictable offence and subject to certain punishments and **forfeitures** who, *without license*, distils or rectifies or assists in distilling or rectifying any spirits, etc., or sets up, possesses or conceals in any place, any still, etc., or brews any beer, etc., except for the use of himself or his family as by the Act provided, or makes any malt or steeps any grain, etc., for malting, or manufactures any tobacco or cigars, etc., except as permitted by the Act.

It is an offence under sec. 180 of the Act to have possession of a "still" without the notice or registration provided by the Act even though such possession be that of a carrier only. The phrase "in any place" used in subsec. (*e*) of sec. 180 is equivalent to "anywhere"; and the context does not limit its meaning to distilleries or places used as distilleries. (8*a*)

Compounding without license. Sec. 191 of the Act provides for the imprisonment of or the infliction of a penalty upon every person who, *without license*, carries on business as a compounder and for the **forfeiture** of all goods compounded or in course of being compounded by such person and of every compounding article found on the compounder's premises.

Opening Tobacco or Cigar Packages, boxes, etc., without breaking excise stamps, etc. See sections 341, 342, 343, 346 and 347, for the respective penalties, punishments and **forfeitures** incurred by any person, (*a*) who opens any package of tobacco or cigars without breaking the excise stamp thereon, or (*b*) who, except as permitted by the Act, puts up or has possession of tobacco or cigars in previously used packages, etc., or (*c*) who sells or offers for sale, except in a licensed tobacco or cigar manufactory any loose or unpacked foreign raw leaf tobacco, or (*d*) who neglects or refuses to destroy the stamps on emptied cigar boxes, wrappers, or buys or accepts from another any such empty stamped boxes, etc., or the stamps taken therefrom, or (*e*) who puts tobacco or cigars in any emptied or partially emptied packages, etc., or has possession of or sells any box, etc., stamped with any fraudulent stamp or any stamp previously used.

Affixing forged or previously used stamps. Section 348 makes every person guilty of an indictable offence

(8*a*) R. v. Brennan & Kennedy, 6 Can. Cr. Cas., 29.

and liable to a penalty not exceeding $500 and not less than $100 and to imprisonment for any term not exceeding five years and not less than six months, who affixes to any package of tobacco or cigars any forged stamp or any stamp previously used.

Removing tobacco or cigars not properly put up and stamped, etc. — Purchasing such. See sections 349, 351, 352, 356, 357 and 358, for the respective penalties punishments and **forfeitures** incurred by any person, (*a*) who removes from any tobacco or cigar manufactory or uses, sells or possesses any tobacco or cigars without the same being put up in proper packages and stamped or without the stamps being properly cancelled, or (*b*) who knowingly purchases or receives for sale any manufactured tobacco or cigars from any manufacturer not duly licensed, or (*c*) who purchases or receives for sale any manufactured tobacco or cigars not legally packed, branded or stamped, or (*d*) who sells or offers for sale or, not being a licensed tobacco or cigar manufacturer, has in his possession any kind of manufactured tobacco or cigars not put up in packages and stamped according to the provisions of the Act, or (*e*) who sells or offers for sale any imported tobacco or cigars or tobacco or cigars purporting to be imported, not put up in packages and stamped as provided by the Act, or (*f*) who sells or offers for sale any cigars in any other form than in new boxes as provided by the Act, or who packs in any box any cigars in excess of the number required by law to be put in each box or affixes a stamp on any box denoting a less amount of duty than required by law, or (*g*) who removes any cigars from any manufactory without being packed in boxes as required by the Act.

Acetic Acid. See sections 362 to 365 as to licenses to carry on the business of manufacturing acetic acid.

In the case of a conviction under the *Inland Revenue Act* and of a money penalty being imposed and, in default of payment, imprisonment for a fixed term, unless the penalty and costs and charges of conveying the accused to gaol are sooner paid, it is necessary that the amount of the latter should be stated in the warrant of commitment, and, where not so stated, the prisoner is entitled to be discharged on *habeas corpus*. (9)

(9) R. v. Corbett, 2 Can. Cr. Cas., 490.

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Sec. 105.	Sec. 118. **Carrying a pistol or air-gun.**	*Unchanged.* (10)
Sec. 106.	Sec. 119. **Selling pistol or air-gun to minor.**	*Unchanged.*
Sec. 107.	Sec. 120. **Having pistol or air-gun on person when arrested.**	*Unchanged.*
Sec. 108.	Sec. 121. **Having pistol or air-gun with intent to injure any one.**	*Unchanged.*
Sec. 109.	Sec. 122. **Pointing any fire-arm or air-gun at any one.**	*Unchanged.*
Sec. 110.	Sec. 123. **Carrying offensive weapons.**	*Unchanged.*
Sec. 111.	Sec. 124. **Carrying sheath-knife in town or City.**	*Unchanged.*
Sec. 112.	Sec. 125. **Exception as to soldiers, etc.**	*Unchanged.*
Sec. 113.	Sec. 126. **Refusing to deliver up offensive weapon to a justice.**	*Unchanged.*
Sec. 114.	Sec. 127. **Coming armed near public meeting.**	*Unchanged.*
Sec. 115.	Sec. 128. **Lying in wait for persons returning from public meeting.**	*Unchanged.*

SEDITIOUS OFFENCES.

Sec. 120.	Sec. 129.	**Unlawful Oaths, — Administering or taking.**	*Unchanged.*
Sec. 121.	Sec. 130.	**Seditious Oaths. Administering or taking.**	*Unchanged.*
Sec. 122.	Sec. 131.	**Compulsion no excuse, unless declaration of it duly made.**	*Unchanged.*
Sec. 123.	Sec. 132.	**Seditious words.**	
Sec. "	Sec. "	**A seditious libel.**	
Sec. "	Sec. "	**A seditious conspiracy.**	
Sec. "	Sec. 133.	**Bona fide intentions not seditious.**	*Unchanged.* (11)
Sec. 124.	Sec. 134.	**Punishment of sedition.**	*Unchanged.*
Sec. 125.	Sec. 135.	**Libel on foreign sovereigns.**	*Unchanged.*
Sec. 126.	Sec. 136.	**Spreading false news.**	*Unchanged.*

(10) Except that sec. 105 of the old Act contained five paragraphs but section 118 of the new Act contains only four paragraphs, which are identical with paragraphs 1, 2, 3 and 5 of the old Act, paragraph 4 thereof being now transferred (differently worded but the same in effect) to section 1135, *post*.

(11) Except that sec. 123 of the old Act is converted into two sections (132 and 133) of the new Act.

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PIRACY.

Sec. 127.	Sec. **137. Piracy by the law of nations.**	*Unchanged.*
Sec. 128.	Sec. **138. Piratical Acts.**	*Unchanged.*
Sec. 129.	Sec. **139. Piratical Acts, with violence.**	*Unchanged.*
Sec. 130.	Sec. **140. Not resisting pirates.**	*Unchanged.*

CONVEYING LIQUOR ON BOARD HIS MAJESTY'S SHIPS.

Sec. 119.	Sec. **141. Taking or attempting to take liquor on board.**	*Unchanged.*

PART III.

[The whole of the sections of this Part, (namely, 142-154), are new as sections of the Code. They are taken from the old R. S. C. (1886), c. 151, which formed part of the Appendix to the old Code.]

RESPECTING THE PRESERVATION OF PEACE IN THE VICINITY OF PUBLIC WORKS.

Interpretation

Sec. **142. Definitions.** In this Part, unless the context otherwise requires:—

(*a*) 'this Part' means such section or sections thereof as are in force, by virtue of any proclamation, in the place with reference to which the Part is to be construed and applied

(*b*) 'commissioner' means a commissioner under this Part

(*c*) 'public work' includes any railway, canal, road, bridge or other work of any kind, and any mining operation constructed or carried on by the Government of Canada or any province of Canada or by any municipal corporation, or by any incorporated company or by private enterprise

PROCLAMATION.

Sec. **143. Bringing this Part into force.** The Governor in Council may, as often as occasion requires, declare by proclamation that upon and after a day therein named this

Part or any section or sections thereof shall be in force in any place in Canada in such proclamation designated, within the limits or in the vicinity whereof any public work is in course of construction, or in any place in the vicinity of any public work within which he deems it necessary that this Part, or any section or sections thereof should be in force; and this Part or any such section or sections thereof, shall, upon and after the day named in such proclamation, take effect within the place or places designated therein.

2. Declaring this Part to be no longer in force. The Governor in Council may, in like manner, declare this Part or any section or sections thereof to be no longer in force in any such place, and may again, from time to time, declare this Part or any section or sections thereof to be in force therein.

3. No such proclamation shall have effect within the limits of any city.

4. All Courts, magistrates and justices shall take judicial notice of every such proclamation.

WEAPONS.

Sec. **144. Delivery of arms.** On or before the day named in such proclamation, every person employed on or about the public work to which the same relates, shall bring and deliver up, to some commissioner or officer appointed for the purposes of this Part, every weapon in his possession, and shall obtain from such commissioner or officer a receipt for the same.

Sec. **145. Seizure of arms not delivered.** Every weapon found in the possession of any person employed as aforesaid after the day named in any proclamation and within the limits designated in such proclamation, may be seized by any justice, commissioner, constable or other peace officer, and shall be forfeited to the use of His Majesty.

Sec. **146. Possessing weapons near public works.** Every one employed upon or about any public work, within any place in which this Part is in force, who, upon or after the day named in such proclamation, keeps or has in his possession or under his care or control within any such place, any weapon, is liable on summary conviction to a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession or under his care or control.

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Sec. 147. **Receiving or concealing arms, with intent.** Every one who, for the purpose of defeating the enforcement of this Part, receives or conceals or aids in receiving or concealing or procures to be received or concealed, within any place in which this Part is in force, any weapon belonging to or in the custody of any person employed on or about any public work, is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than forty dollars; and a moiety of such penalty shall belong to the informer and the other moiety to His Majesty, for the public uses of Canada.

Sec. 148. **Employees carrying weapons.** Every person employed on any public work found carrying any weapon, within any place in which this Part is at the time in force, for purposes dangerous to the public peace, is guilty of an indictable offence.

Sec. 149. **Return of weapons when this Part ceases to be in force.** Whenever this Part ceases to be in force within the place where any weapon has been delivered and detained in pursuance thereof, or wherever the owner or person lawfully entitled to any such weapon satisfies the commissioner that he is about to remove immediately from the limits within which this Part is at the time in force, the commissioner may deliver up to the owner or person authorized to receive the same, any such weapon, on production of the receipt given for it.

INTOXICATING LIQUOR.

Sec. 150. **Retail Sale of liquor prohibited.** Upon and after the day named in such proclamation and during such period as the proclamation remains in force, no person shall, at any place within the limits specified in the proclamation, sell, barter or directly or indirectly, for any matter, thing, profit or reward, exchange, supply or dispose of, or shall give to any other person any intoxicating liquor intended to be dealt with in any such way.

2. The provisions of this section shall not extend to any person selling intoxicating liquor by wholesale, and not retailing it, if the said person is a licensed distiller or brewer nor shall they apply where liquor is supplied for *bona fide* medicinal purposes upon the prescription of a duly qualified medical practitioner. (*As Amended by the 6 and 7 Ed. 7, c. 9, sec. 2*).

Sec. **151. Penalty.** Every one who, by himself, his clerk, servant, agent or other person, violates any of the provisions of the last preceding section, is guilty of an offence against this Part, and liable on summary conviction, to a penalty of fifty dollars and costs and, in default of payment, to imprisonment for a term not exceeding three months; and, upon any subsequent conviction, to a penalty of one hundred dollars and costs, or to imprisonment for a term not exceeding six months, or to both, and, in default of payment of such penalty, to imprisonment or to further imprisonment not exceeding three months; and imprisonment in each case shall be either with or without hard labor. (*As amended by the 6 and 7 Ed. 7, c. 9, sec. 3*).

Sec. **152. Agent's liability.** Every clerk, servant, agent or other person who, being in the employment of or on the premises of another person, violates or assists in violating any of the said provisions for the person in whose employment or on whose premises he is, shall be equally guilty with such person, and shall be liable to the punishment mentioned in the last preceding section.

Sec. **153. Recovery of money, etc., paid for liquor.** Any payment or compensation, whether in money or securities for money, labor or property of any kind, for intoxicating liquor sold, bartered, exchanged, supplied or disposed of contrary to the provisions aforesaid, shall be held to have been criminally received without consideration and against law, equity and good conscience, and the amount or value thereof may be recovered from the receiver by the person making, paying or furnishing such payment or compensation.

Sec. **154. Transfers for liquor void.** All sales, transfers, conveyances, liens and securities of every kind which either in whole or in part have been made or given for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of contrary to such provisions shall be void against all persons, and no right shall be acquired thereby.

2. No action of any kind shall be maintained, either in whole or in part for or on account of intoxicating liquor sold, bartered, exchanged, supplied, or disposed of, contrary to the said provisions.

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PART IV.

OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE.

Interpretation.

Sec. 133. Sec. **155. Definitions:**

" 3. " (*a*) **'the Government'** includes the government of Canada and the government of any province of Canada as well as His Majesty in the right of Canada or of any province thereof and the Commissioners of the Transcontinental Railway. *Extended, as here set forth.*

" " (*b*) **'Official or person in the employment of the government'** and **'official or employee of the government,'** extend to and include the Commissioners of the Transcontinental Railway and the persons holding office as such commissioners, and the engineers, officials, officers, employees and servants of the said commissioners; *Added.*

Sec. 137. " (*c*) **"office".** *Unchanged.*

CORRUPTION AND DISOBEDIENCE.

131. **156. Judicial Corruption.** *Unchanged.*

132. **157. Corruption of prosecuting officers.** *Unchanged.*

133. **158. Frauds upon the Government.**

" (*a*) " (*a*) **Making offer or gift to unduly influence official.** *Unchanged.*

" (*b*) " (*b*) **Accepting such offer or gift.** *Unchanged.*

" (*c*) " (*c*) **Procuring withdrawal of tenders.** *Unchanged.*

" (*d*) " (*d*) **Accepting gift, etc., for withdrawal of tender:** In case of tendering for the performance of any work, the doing of anything, or the furnishing of any goods, effects, food or materials for the government when tenders are called for by or on behalf of the government, accepts or receives,

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	directly or indirectly, or permits or allows to be accepted or received by any member of his family or by any other person under his control, or for his benefit, any such gift, loan, offer, promise, consideration or compensation, as a consideration or reward for withdrawing or for having withdrawn such tender;	
	Slightly changed (in the wording), as here set forth.	
" (*e*)	" (*e*) **Official accepting gift or person giving anything concerning government business.**	*Unchanged.*
" (*f*)	" (*f*) **Compensation for procuring payment of claim, etc.**	*Unchanged.*
" (*g*)	" (*g*) **Commission or reward to any official.** Having dealings of any kind with the government through any department thereof, pays to any employee or official of the government or to any member of the family of such employee or official, or to any person under his control or for his benefit, any commission or reward; or, within one year before or after such dealings, without the express permission in writing of the head of the department with which such dealings have been had, the proof of which permission shall lie upon him, makes any gift, loan, or promise of any money, matter or thing to any such employee or other person aforesaid;	
	Slightly changed (in the wording) as here set forth.	
" (*h*)	" (*h*) **Official accepting such commission or reward.**	*Unchanged.*
" (*i*)	" (*i*) **Contractor subscribing, etc., to election fund.**	*Unchanged.*
" 2	" 2 **Penalty, if gift, etc., exceeds one thousand dollars.**	*Unchanged.*
" 3.	" **'the Government,'** (meaning of). (1)	
Sec. 134.	Sec. **159. Other consequences.**	*Unchanged.*
Sec. 135.	Sec. **160. Breach of trust by public officer.**	*Unchanged.*

(1) Converted (with a little extension) into sec. 155 (*a*). See p. 33, *ante*.

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Sec. 136.	Sec. 161. **Municipal corruption.**	*Unchanged.*
Sec. 137.	Sec. 162. **Selling or purchasing office.**	*Unchanged.*
Sec. "	Sec. 163. **Corrupt negociations about offices.**	*Unchanged.*
Sec. "	**'Office,'** (meaning of). (2)	
Sec. 138.	Sec. 164. **Disobeying a Statute.**	*Unchanged.*
Sec. 139.	Sec. 165. **Disobeying orders of Court.**	*Unchanged.*
Sec. 140.	**Neglect of peace officer to suppress riot.**	*Made into sec. 94, ante.*
Sec. 141.	**Neglect to aid peace officer thereat.**	*Made into sec. 95, ante.*
Sec. 143.	Sec. 166. **Misconduct of officers entrusted with execution of writs.**	*Unchanged.*

PEACE OFFICERS.

Sec. 142.	Sec. 167. **Neglect to aid peace officers in arresting offenders.**	*Unchanged.*
Sec. 144.	Sec. 168. **Obstructing a public officer.**	*Unchanged.*
Sec. "	Sec. 169. **Obstructing a peace officer or a person executing process.**	*Unchanged.* (3)

It is necessary for the prosecution to prove that rent was due and in arrear before a conviction can be made under section 144, (now section 169) of the Code for the offence of wilfully obstructing a lawful distress. (3*a*)

On such a charge evidence is admissible for the defence in proof that no rent was due. (4)

The retaking of possession by a vendor of goods, under a contract for the conditional sale of them, is not within the term "lawful distress or seizure" as used in clause (*b*) of section 169 and an obstruction of the vendor's bailiff in regaining such possession is not an offence under the section. (5)

Where the process of an inferior court is void by reason of its containing a direction to a peace officer to seize certain goods at a place outside of the territorial jurisdiction of the court, such process is insufficient, upon which to base a conviction for resisting the officer in its execution. (6)

Where a bystander states, to other bystanders, in the hearing of a peace officer making an arrest for drunkenness that the person

(2) Converted into sec. 155 (*c*). See p. 33, *ante*.
(3) Except that the clauses of the section are differently arranged.
(3*a*) R. v. Harron et al., 7 Can. Cr. Cas., 543.
(4) *Ib.*
(5) R. v. Shand, 7 Ont. L. R., 190.
(6) R. v. Finlay, 4 Can. Cr. Cas., 539.

being arrested is not drunk, such statement does not constitute the offence of obstructing a peace officer, if the statement was made *bona fide* and in the belief of its truth. If, in an unwarranted attempt of the police to arrest a bystander, the latter strikes the policeman, he is not guilty of an assault upon a peace officer in the execution of his duty; for the policeman has no duty to arrest him. (7)

MISLEADING JUSTICE.

Sec. 145. Sec. **170. Perjury defined.** *Unchanged.* (8)
Sec. " -4. Sec. " **2. Subornation of perjury defined.** *Unchanged.*
Sec. " -1. Sec. " **3. Evidence** in this section includes evidence given on the *voir dire* and evidence given before a grand jury. *Transferred from the last clause of par. 1 of the old sec. 145.*
Sec. " 2. Sec. **171. Witness defined.** *Unchanged.* (9)
Sec. " 3. Sec. " **2. Judicial proceeding.** *Unchanged.* (9)

It is perjury under this section to give false testimony before a justice of the peace holding a judicial proceeding under a provincial law although the justice was by the terms of that law disqualified from hearing the charge by reason of not being a resident of the county in which the alleged offence took place. (10)

Counselling a person to commit perjury is not subornation of perjury, unless the perjury counselled is actually committed, but it is punishable as an incitement to give false evidence, which is an offence at common law. (11)

Perjury may be assigned in respect of an examination for discovery in a civil action; an examination for discovery being a judicial proceeding. (12)

Sec. 148. Sec. **172. Other acts of perjury.** *Unchanged.*
Sec. 149. Sec. **173. False affidavit made out of a province but within Canada.** *Unchanged.*
Sec. 146. Sec. **174. Punishment of perjury or subornation of perjury.** *Unchanged.*

(7) R. v. Cook, 11 Can. Cr. Cas., 32.
(8) Except that the last clause of the first paragraph of the old sec. (145) is a separate paragraph (3) of the new sec. 170.
(9) Except that paragraphs 2 and 3 of the old sec. (145) is a separate section (171) of the new Act.
(10) R. v. Drew (No. 1) 6 Can. Cr. Cas., 241. *Aff.* in appeal (by the Supreme Court of Canada), R. v. Drew (No. 2) 6 Can. Cr. Cas., 424.
(11) R. v. Cole, 5 Can. Cr. Cas., 330.
(12) R. v. Thickens, 11 Can. Cr. Cas., 274.

2ND EDIT.	REVISED STATUTES 1906	REMARKS
Sec. 147.	Sec. **175.** False oaths in extra-judicial matters.	*Unchanged.*
Sec. 150.	Sec. **176.** False statements in extra-judicial matters.	*Unchanged.*
Sec. 151.	Sec. **177.** Fabricating evidence.	*Unchanged.*
Sec. 152.	Sec. **178.** Conspiring to bring false accusation.	*Unchanged.*
Sec. 153.	Sec. **179.** Administering oaths without authority.	*Unchanged.*
Sec. 154.	Sec. **180.** Corrupting witnesses or jurors.	*Unchanged.*
Sec. 155.	Sec. **181.** Compounding penal actions.	*Unchanged.*
Sec. 156.	Sec. **182.** Corruptly taking reward for recovering stolen property, without bringing offender to trial.	*Unchanged.*
Sec. 157.	Sec. **183.** Advertizing reward for return of stolen property.	*Unchanged.*
Sec. 158.	Sec. **184.** False declaration of execution of judgment of death.	*Unchanged.*

ESCAPES AND RESCUES.

Sec. 159.	Sec. **185.** Being at large while under sentence of imprisonment.	Unchanged.
Sec. 160.	Sec. **186.** Assisting prisoner of war to escape.	*Unchanged.*
Sec. 161.	Sec. **187.** Prison breach.	*Unchanged.*
Sec. 162.	Sec. **188.** Attempt to break prison.	*Unchanged.*
Sec. 163.	Sec. **189.** Escape from custody after conviction or from prison whether convicted or not.	*Unchanged.*
Sec. 164.	Sec. **190.** Escape from custody.	*Unchanged.*
Sec. 165.	Sec. **191.** Rescue or assisting escape of person under sentence of death or imprisonment for life.	*Unchanged.*
Sec. 166.	Sec. **192.** Rescuing or assisting escape in other cases.	*Unchanged.*
Sec. 166*a*.	Sec. **193.** Escape by failure to perform legal duty.	*Unchanged.*
Sec. 167.	Sec. **194.** Escape by conveying things into prison.	*Unchanged.*
Sec. 168.	Sec. **195.** Causing discharge of prisoner under pretended authority.	*Unchanged.*
Sec. 169.	Sec. **196.** Punishment of escaped prisoner.	*Unchanged.*

PART V.

OFFENCES AGAINST RELIGION, MORALS AND PUBLIC CONVENIENCE.

Interpretation.

Sec. **197. Definitions.** — In this Part, unless the context otherwise requires: —

(*a*) '**theatre**' includes any place open to the public, gratuitously or otherwise, where dramatic, musical, acrobatic or other entertainments or representations are presented or given; *Added.*

Sec. 186*a*. (*b*) '**guardian**' includes any person who has in law or in fact the custody or control of any girl or child referred to; *Unchanged, except as here set forth.*

Sec. 207(2). Sec. **197.** (*c*) '**public place**' includes any open place to which the public have or are permitted to have access, and any place of public resort. *Unchanged, except as here set forth.*

OFFENCES AGAINST RELIGION.

Sec. 170. Sec. **198. Blasphemous Libels.** *Unchanged.*

Sec. 171. Sec. **199. Obstructing Officiating Clergyman.** *Unchanged.*

Sec. 172. Sec. **200. Violence to Officiating Clergyman.** *Unchanged.*

Sec. 173. Sec. **201. Disturbing Religious or other special meetings.** Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding fifty dollars and costs, and in default of payment to one months' imprisonment who wilfully disturbs, interrupts or disquiets any assemblage of persons met for religious worship, or for any moral, social or benevolent purpose, by profane discourse, by rude or indecent behaviour, or by making a noise, either within the place of such meeting or so near it as to disturb the order or solemnity of the meeting. *Slightly altered, as here set forth.*

This section does not apply to a meeting of electors called by one of the candidates during a municipal election. (1)

See R. S. Q., Articles 2946 and 2964, as to the preservation of order at political meetings. And see sections 126-128, *ante*, and sections 619-621, *post*, as to the preservation of order at public meetings.

A person, who enters a hall, leased by a religious association or body while a meeting for religious worship is being held in it under the direction of officers of the association, and, addressing himself to the assemblage, says he is a Catholic and a French Canadian, as most of them are, that they should not stay where they are, and calls upon them to leave, is guilty of an offence of disturbing a religious meeting under the above section of the Code. (2)

The offence of unlawfully obstructing divine service under this section is not made out where the obstructed clergyman had no legal claim to the possession of or use of the church premises and was in point of law a trespasser thereon himself. (2*a*)

If a jury sent back to reconsider its verdict of guilty brings in the same verdict a second time contrary to the judge's direction upon a point of law, such verdict must be recorded, and the accused left to his remedy by reserved case or appeal. (2*a*)

SUNDAY OBSERVANCE.

The selling of cigars on Sunday may be prohibited, either directly by a provincial legislature or by municipal by-laws authorized by such legislature; and in either case such restriction is of a merely local nature, to be classed as a police or municipal regulation and not as a matter essentially appertaining to the criminal law, and so within the sole competence of the parliament of Canada. (3) But see the *Lord's Day Act*, in Appendix, *post*.

A city by-law, — permitting the sale, on Sunday, of "fruits, cigars, confectionery and temperance beverages," by all persons *who sell all these things* and are not engaged in trade, — is invalid, as arbitrary and unjust, because it does not authorize the sale of tobacco as well as cigars, and because it does not extend to all persons engaged in the same business. (4)

It has been held in British Columbia that a conviction for "keeping a barber shop open" on Sunday contrary to a municipal bylaw cannot be supported upon the mere admission of the accused when

(1) R. v. Lavoie, 6 Can. Cr. Cas., 39.

(2) R. v. Gauthier, 11 Can. Cr. Cas., 263; Que. Off. Rep., 14 K. B., 530.

(2*a*) R. v. Wasyl Kapij, 9 Can. Cr. Cas., 186; 15 Man. L. R., 110.

(3) *Re* Greene, 4 Can. Cr. Cas., 182.

(4) City of Montreal v. Fortier, 6 Can. Cr. Cas., 340.

called upon to plead that he had shaved customers in his shop on the day named; and it seems that a barber who exercises his trade at his shop with the doors barred cannot be said to be "keeping open." (5)

The *Lord's Day Act*, (R. S. (1906), c. 153), forms part of the Appendix to the present Supplement.

Correction. — On pages 157-159 of his second edition of the Criminal Code, the Author cited (among others) the case of R. v. Albertie, which was by error entered there as being reported in volume 1 (instead of in volume 3) of the Canadian Criminal Cases. (6)

Sec. 174. Sec. **202. Buggery.** *Unchanged.*
Sec. 175. Sec. **203. Attempt to commit it.** *Unchanged.*
Sec. 176. Sec. **204. Incest.** *Unchanged.*
Sec. 177. Sec. **205. Indecent Acts.** *Unchanged.*

The word "wilfully" as applied to the offence declared by this section implies that the act was done with evil intent, and without justifiable excuse, while the word "unlawful" does not necessarily refer to criminal penalty or prohibition. (7)

A charge of "unlawfully" committing an indecent act does not sufficiently charge that the act was "wilfully" done; and an accused person who, on his plea of guilty, is summarily convicted upon such a charge and who is sentenced to imprisonment, is entitled to be discharged on *habeas corpus*, as the commitment and conviction disclose no offence under the Criminal Code. (7)

A summary conviction for indecency under section 205 must find that the act was *wilful*, and the omission of such finding is a good ground for discharge upon *habeas corpus*. A statement in the conviction that the accused "unlawfully" committed an indecent act does not cure the defect of not stating that the act was done *wilfully* in terms of the enactment creating the offence. (8)

Sec. 178. Sec. **206. Gross Indecency.** *Unchanged.*
Sec. 179. Sec. **207. Publishing Obscene Matter.** *Unchanged.*

Where a defendant was indicted for offering for sale a medicine called a "Female Regulator," contained in a box on which was printed, — "*Caution*, — Ladies are warned against using these tablets during pregnancy," and no evidence was offered as to the ingredients of the tablets, the Crown simply contending that the caution in reality counselled the use of the medicine to avoid pregnancy, the Judge held that the words must be taken in their na-

(5) *Re* Lambert, 4 Can. Cr. Cas., 533.
(6) R. v. Albertie, 3 Can. Cr. Cas., 356.
(7) R. v. O'Shaughnessy, 8 Can. Cr. Cas., 136.
(8) R. v. Tupper, 11 Can. Cr. Cas., 199.

tural sense, and directed the jury to acquit, reserving at the Crown's request, a case, (9); and it was afterwards held, by the Court of Appeal, that the trial judge may withdraw such a case from the jury if the advertisement is incapable of such a meaning as was imputed to it, but that if it be held to be capable of such a meaning it should be left to the jury to decide whether or not it actually had such meaning, having regard to the context of certain objectionable words. (10)

To constitute a book or printed matter "obscene", within the meaning of the above section, it must express unchaste or lustful ideas, and tend to corrupt those whose minds are open to such immoral influences and into whose hands the publication may fall. It is obligatory on the prosecution to prove knowledge, on the part of the accused, of the contents of the obscene publication. (11)

Sec. 208. **Immoral Theatrical Performance.** Every person who, being the lessee, agent or person in charge or manager of a theatre, presents or gives or allows to be presented or given therein any immoral, indecent or obscene play, opera, concert, acrobatic, variety, or vaudeville performance, or other entertainment or representation, is guilty of an offense punishable on indictment or on summary conviction, and liable, if convicted upon indictment, to one year's imprisonment with or without hard labour, or to a fine of five hundred dollars, or to both, and, on summary conviction, to six months' imprisonment, or to a fine of fifty dollars, or to both.

2. Every person who takes part or appears as an actor, performer, or assistant in any capacity, in any such immoral, indecent or obscene play, opera, concert, performance, or other entertainment or representation, is guilty of an offence and liable, on summary conviction, to three months' imprisonment, or to a fine not exceeding twenty dollars, or to both.

3. Every person who so takes part or appears in an indecent costume is guilty of an offence and liable, on summary conviction,

(9) R. v. Karn, 38 C. L. J., 125; 5 Can. Cr. Cas., 543.
(10) R. v. Karn, 6 Can. Cr. Cas., 479.
(11) R. v. Beaver, 9 Can. Cr. Cas., 415; 9 Ont. L. R., 418.

to six months' imprisonment, or to a fine of fifty dollars, or to both. *Added.*

Ordinary ballet-dancing in the customary costume is not an immoral or indecent play or performance within the meaning of this section.

The word "indecent" has no fixed legal meaning, and it devolves upon the prosecution in a charge of presenting an indecent theatrical performance to affirmatively prove that the performance in question was of a depraving tendency. (12)

A provincial legislature has jurisdiction to legislate concerning matters of police regulation of public morals; but, in so far as the same subject is dealt with by the Dominion Parliament, the Dominion legislation will prevail. (13)

Sec. 180. Sec. **209. Posting obscene publications.** *Unchanged.*

Sec. 183*a*. Sec. **210. Burden of proof in seduction.** *Unchanged.*

Sec. 181. Sec. **211. Seduction of girls between fourteen and sixteen.** *Unchanged.*

Sec. 182. Sec. **212. Seduction under promise of marriage.** *Unchanged.*

Sec. 183. Sec. **213. Seduction of ward or of female employee.** *Unchanged.*

Sec. 184. Sec. **214. Seducing female passengers on vessels.** *Unchanged.*

Where a seduction under promise of marriage has taken place and the illicit intercourse between the parties is continued, upon renewals of promise, for more than a year before the commencement of the prosecution, a prosecution for the original seduction is barred, (under section 1140 (*c*), *post*), and a conviction is not warranted as for a subsequent seduction within the year, as the girl is not then of "previously chaste character." The term "previously chaste character," in section 212, is not equivalent to previously chaste reputation, but refers to the actual moral status of the girl. (14)

Sec. 186. Sec. **215. Parent or guardian procuring defilement of girl or woman.** *Unchanged.*

Sec. 185. Sec. **216. Procuring defilement of women or girls.** *Unchanged.*

Sec. 187. Sec. **217. Householders permitting defilement of girls on their premises.** *Unchanged, in meaning.*

Upon a charge of procuring a girl to come to Canada from abroad with intent that she may become an inmate of a brothel in Canada the acts of inducement must be shewn to have been committed in Canada, in order to give jurisdiction to a Canadian court, unless the accused is a British subject. (14*a*).

(12) R. v. McAuliffe, 8 Can. Cr. Cas., 21.
(13) *Ex parte* Ashley, 8 Can. Cr. Cas., 328.
(14) R. v. Lougheed, 8 Can. Cr. Cas., 184.
(14*a*) *Re* Gertie Johnson, 8 Can. Cr. Cas., 243.

Sec. 188. Sec. **218. Conspiracy to defile.** *Unchanged.*
Sec. 189. Sec. **219. Carnally knowing idiots.** *Unchanged.*
Sec. 190. Sec. **220. Prostitution of Indian Women.** *Unchanged.*

NUISANCES.

Sec. 191. Sec. **221. Common Nuisance defined.** *Unchanged.*
Sec. 192. Sec. **222. Criminal Common Nuisances.** *Unchanged.*
Sec. 193. Sec. **223. Non-criminal common nuisances.** *Unchanged.*

A street railway commits a common nuisance by systematically moving electric cars reversely on a public street without fenders and gongs or other signalling appliances being placed at the rear of the cars, while being so operated, and thereby endangering the lives and safety of the public. An indictable nuisance, under the above sections may consist in the mode of using or controlling anything, and it is not essential to the offence that there should be anything dangerous in the thing itself. (15)

An indictment for a nuisance in obstructing a public highway is insufficient to charge a criminal offence under the above sections, if it does not allege injury to the *person* of some one; and *personal* injury is not to be inferred from a count which states that "actual" injury has been occasioned to an individual named. (15*a*).

Sec. 194. Sec. **224. Knowingly selling articles unfit for human food.** *Unchanged.*

ADULTERATION.

At pages 176-190 of the Author's second edition of the Criminal Code, some of the principal provisions of the old *Adulteration Act* (R. S. C., 1886, c. 107), and of the old *Canned Goods Act* (R. S. C., 1886, c. 105), and of their respective amendments are set out and annotated. These Acts and their respective amendments are now repealed and replaced by the new *Adulteration Act* (R. S. (1906), c. 133), and the new *Canned Goods Act* (R. S. (1906), c. 134); which are now set forth and annotated in the Appendix to the present Supplement.

Sec. 195. Sec. **225. Common Bawdy House defined.** *Unchanged.*

This section enlarges the meaning of the term "common bawdy house," and a conviction for keeping "a disorderly house, that is to say, a bawdy house," should shew further particulars of the offence by specifying the subject of the keeping for purposes of prostitution, i. e. whether a "house," a "room," a "set of rooms" or other "place," so as to come within the definition of the section. (15*b*)

(15) R. v. Toronto Ry. Co., 10 Ont. L. R., 26; 10 Can. Cr. Cas., 106.
(15*a*) R. v. Reynolds, 11 Can. Cr. Cas., 312.
(15*b*) R. v. Shepherd, 6 Can. Cr. Cas., 403.

By the *Criminal Code Amendment Act*, 1907, this section, — 225, — has been repealed and re-enacted as follows: — "225. — A common bawdy house is a house room or set of rooms or place of any kind kept for purposes of prostitution, or occupied or resorted to by one or more persons for such purposes."

A woman reputed to be a prostitute living alone in a house and receiving men for the purpose of acts of prostitution with herself alone, but not allowing other women to resort there for a similar purpose is not thereby guilty of keeping a bawdy house. (16)

A prosecution against the keeper of a common bawdy-house may be brought either by indictment or under the Summary Trials procedure, or the keeper may be charged as a vagrant under the Summary convictions procedure; and neither the provision for summary trial nor that for summary conviction abrogates the right of the Crown to bring an indictment. The different methods of procedure with the varying penalties, dependent upon the class of tribunal selected, are not inconsistent but are alternative. (17)

Sec. 196. Sec. **226. Common Gaming House defined.** *Unchanged.*

Where the keeper of a cigar store allowed gaming upon his premises and received the "rake-off," a portion of the stakes, in consideration of his supplying refreshments and cigars to the players, the jury may be instructed that such facts are evidence of keeping the place "for gain" so as to constitute the same a common gaming house, although the amount so received was no more than a reasonable remuneration for the articles supplied.

The question in such case is not whether the accused made an actual *substantial* profit by the gaming, but whether the receipts of his business were increased by sales to persons who resorted to the store for the purpose of gaming. (18)

The proprietor of a place in which the game known as "darts" or in which a cane and ring game is carried on, under conditions which make the chance of the proprietor much more favorable than that of the customers is properly convicted of keeping a gaming house. (19)

It is a question of fact and not of law whether the use of a slot machine for selling cigars, whereby customers obtained, for the one price, a number of cigars varying according to the working of the machine, is or is not a game of chance, a mixed game of chance and skill, or a game of skill only. (20)

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(16) R. v. Osberg, 9 Can. Cr. Cas., 180; 15 Man. L. R., 147; R. v. Mannix, 10 Ont. L. R., 303; 10 Can. Cr. Cas., 150.

(17) R. v. Sarah Smith, 9 Can. Cr. Cas., 338.

(18) R. v. James, 6 Ont. L. R., 35; 7 Can. Cr. Cas., 196.

(19) R. v. Cushen, 11 Can. Cr. Cas., 183; R. v. Russell, 11 Can. Cr. Cas., 180.

(20) R. v. Fortier, 7 Can. Cr. Cas., 417; Que. Off. Rep., 15 K. B., 308.

A person who keeps in his shop an automatic slot machine, for use by customers, is, — when its operation involves a game of chance in which the chances are not alike favorable to all,—guilty of using his shop for unlawful gaming under the *English Gaming House Act*, 1854. (21)

If, in contravention of a regulation of Ontario License Commissioners, games are played in licensed premises, in the absence of the licensee, the latter may be convicted. (22)

Proof that a game with cards, dice and "chips" was being played by several people seated at tables, each player procuring the "chips" from the accused, the proprietor of the place, and handing over to him the money therefor, and that the accused said that the game was "fan tan," and that he was "doing well out of it," is evidence that the game was a game of chance and that the place was being kept by the accused for gain under the sections of the Code relating to common gaming houses. (23)

Proof that persons, other than those resident at or belonging to the house, room or place, at which the proprietor operates for gain a game of chance or a mixed game of chance and skill, were in attendance there and participated in such game is evidence that such persons "resorted" to such place for the purpose of playing such game, and of the place being a common gaming house. (24)

The publication in a newspaper of an advertisement soliciting bets to be placed upon horse races and also giving the results from day to day of the races is illegal; and the newspaper proprietor is guilty, under section 197 (*d*) — now section 227(*d*), — of the Code, of the indictable offence of using the newspaper office for the purpose of facilitating the making of bets upon horse races and of keeping a common betting house. (25)

The manager of a football coupon competition, (being a means of receiving money as the consideration for a promise to pay money on the event of football matches), published in a newspaper, — as an essential part of his scheme, — an advertisement of prizes offered to and the rules to be observed and amounts to be paid by intending competitors, who were directed to fill in coupon sheets or forms appended to the advertisement, and to send them, with the amounts payable, to an address in Holland. He also published, in the same newspaper, lists of the prize winners in previous

(21) Fielding v. Turner, [1903], 1 K. B., 867; Thompson v. Mason 90 L. T., 649.
(22) R. v. Laird, 7 Can. Cr. Cas., 318.
(23) R. v. Mah Kee, 9 Can. Cr. Cas., 47.
(24) *Ib.*
(25) R. v. Smallpiece, 7 Can. Cr. Cas., 556. And see McKenzie v. Hawke [1902] 2 K. B., 216.

competitions. The office of the newspaper was opened and kept for the purpose of the competition. *Held* that there was evidence that the manager of the competition was a person using the office of the newspaper for the purpose of money being received by him as the consideration of the promise to pay money on the event of a game within the meaning of section 1 of the English *Betting Act*, 1853, and that the registered proprietor of the newspaper was a person knowingly and wilfully permitting the office to be used as aforesaid within the meaning of section 3 of the Act. (26)

It has been held, in England, that any person publishing an advertisement, whereby it is made to appear that an office is used for the purpose of a coupon competition, being a scheme whereby money is received as the consideration for a promise to pay money on the event of a football match, is liable to the penalty mentioned in section 7 of the English *Betting Act* 1853. (27) It was also held that any person publishing an advertisement whereby it is made to appear that any person will, on application, give information or advice with respect to a coupon competition, — being a scheme whereby, through the medium of an office, money is received as a consideration for a promise to pay money on the event of a football match, — is liable to the penalty mentioned in section 3 of the English Betting Act, 1874. (28)

The proprietor of a newspaper issued, with each copy of the paper, a coupon, so that the purchaser might fill in the names of the probable winners of certain football matches, a prize of twenty pounds sterling being given for the most accurate forecast. No money was paid except the price of the newspaper and any competitor, desiring to send in more than one estimate, could do so by obtaining additional copies of the paper. By far the greater number of copies were sold to the public through agents and not at the newspaper office. The appellant purchased copies of the newspaper at the newspaper office and filled in and returned the coupons to the office. *Held* that if the money was in fact received for the coupons and not merely for the newspaper, the proprietor had committed the offence under section 1 of the English *Betting* Act, 1853, of having opened, kept and used an office for the purpose of money being received in consideration of an undertaking to pay money on a contingency relating to a game. (29)

(26) Mackenzie v. Hawke, 71 L. J., K. B., 561; [1902] 2 K. B., 216; 20 Cox C. C., 305. See Stoddart v. Hawke, 71 L. J., K. B., 133; [1902] 1 K. B., 353; 20 Cox C. C., 111.

(27) Hawke v. Mackenzie (No. 1 and No. 2), 71 L. J., K. B., 565; [1902] 2 K. B., 225; 20 Cox C. C., 314.

(28) *Ib.* R. v. Stoddart, 70 L. J., K. B., 189, followed.

(29) Hawke v. Hulton, 22 T. L. R., 169; Mews Ann. Dig. [1906], 116.

In an English case, the defendants were charged with unlawfully using certain premises, occupied by a social club, for the purpose of betting therein with persons resorting thereto, and with keeping a common gaming house, — the defendants being respectively the chairman and secretary of the club, and the betting being exclusively with other members of the club. It appeared that the varions members were not betting with one another indiscriminately, but were divided into two classes, the defendants being the bookmakers and the others going there to bet with them. On many occasions the defendants occupied the same places, sat at the same table, and used the tape list. *Held* that there was evidence to go to the jury in support of the charge. (30)

Mere acquiescence by a director in prohibited acts of a corporation is not such a participation therein as will constitute him an aider or abetter, or make him criminally liable as a party for the illegal acts of the corporation. The lease by an incorporated jockey club of the betting privileges on the race tracks of the club with the knowledge and acquiescence of the Club's president in the making of the lease and in the use of the covered betting enclosure by bookmakers exercising its privileges, but without the president taking part otherwise in the betting or in the management of the enclosure, does not involve the club's president in criminal liability as the keeper of a common betting house under sections 197 and 198 (now sections 227 and 228) of the Code. (30*a*)

Sec. 197. Sec. **227. Common Betting House defined.** *Unchanged.*

The exemption contained in sub section 2 of section 235, *post*, as to bets made on the race course of an incorporated association during a race meeting is not to be read into sections 227 and 228, as to the offence of keeping a common betting house.

It is an offence to keep a common betting house whether or not it is kept on the race course of an incorporated association, and is operated only during the actual progress of a race meeting. (31)

Sec. 198. Sec. **228. Punishment for keeping any disorderly house, that is, any common bawdy house, common gaming house or common betting house.** *Unchanged.*

Sec. 199. Sec. **229. Playing or looking on in gaming house.** *Unchanged.*

Sec. 200. Sec. **230. Obstructing peace officer entering gaming house.** *Unchanged.*

(30) R. v. Corrie, 68 J. P., 204; 20 T. L. R., 365.

(30*a*) R. v. Hendrie, 10 Can. Cr. Cas., 298; 11 Ont. L. R., 202.

(31) R. v. Hanrahan, 3 Ont. L. R., 659; 5 Can. Cr. Cas., 430. See also R. v. Saunders, 12 Ont. L. R., 615; *Aff.* by the Supreme Court, 27 C. L. T., 228.

2ND EDIT.	REVISED STATUTES 1906	REMARKS
Sec. 201.	Sec. **231. Gaming in stocks or in merchandise.**	*Unchanged.* (32)
Sec. "	Sec. **232. Bucket shops.**	*Unchanged.* (32)
Sec. 202.	Sec. **233. Frequenting Bucket shops,** — (*places in which gaming in stocks is carried on*). Every one is guilty of an indictable offence and liable to one year's imprisonment who habitually frequents any office or place wherein the making or signing or procuring to be made or signed, or the negociating or bargaining for the making or signing of such *prohibited* contracts of sale or purchase is carried on.	*Unchanged.* (32*a*)

It has been held, in Montreal, that a broker, who acts as such for two parties, — one a buyer and the other a seller, — without having any pecuniary interest in the transaction, beyond his fixed commission, and without any guilty knowledge on his part of the intention of the contracting parties to gamble in stocks or merchandise, is not liable to prosecution under section 201 (*a*) and (*b*) (now section 231*a* and *b*) of the Criminal Code of Canada, nor as accessory under section 61 (now sec. 69) of the Code. (32*b*).

But it has since been held, in Ontario, that a person, who acts as agent for another in managing a branch office for gambling transactions within this section, (231 of the new Act) knowing that there was no intention of transferring any property or title to property, is liable to conviction as an accessory, although his sole interest in the transactions was in the commissions paid to him for effecting the same; and such agent is also liable under section 232 of the new Act, as the keeper of a common gaming house; and, upon a speedy trial, is liable to imprisonment for five years, under section 1052 of the Code. (33)

It is open for the jury, or the judge trying the case without a jury, to find, notwithstanding the form of the papers, passed between the parties, that there was a secret understanding between them that there should be no delivery of the stocks or property, but payment of differences only. (34)

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(32) Except that sec. 201 of the old Act is made into two sections (231 and 232) of the new Act.

(32*a*) Except by the insertion of the word "*prohibited*" before the word "*contract*."

(32*b*) R. v. Dowd, 4 Can. Cr. Cas., 170.

(33) R. v. Harkness, (No. 1), 10 Can. Cr. Cas., 193; *Aff.* in appeal, R. v. Harkness (No. 2), 10 Can. Cr. Cas., 199; 10 Ont. L. R., 555.

(34) R. v. Harkness, (No. 2), 10 Can. Cr. Cas., 199.

2ND EDIT.	REVISED STATUTES 1906	REMARKS
Sec. 203.	Sec. **234.**	**Gambling in public conveyances.** Every one is guilty of an indictable offence, and liable to one year's imprisonment who, —
Sec. " (*a*)	Sec. " (*a*)	in any railway car or steamboat, used as a public conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person any money, chattel, valuable security or property; or
Sec. " (*b*)	Sec. " (*b*)	attempts to commit such offence by actually engaging any person in any such game with intent to obtain money or other valuable thing from him.
Sec. " 2	Sec. " 2.	Every conductor, master or superior officer in charge of and every clerk or employee when authorized by the conductor or superior officer in charge of any railway train or steamboat, station or landing place in or at which any such offence, as aforesaid, is committed or attempted, *shall,* with or without warrant, arrest any person whom he has good reason to believe to have committed or attempted to commit any such offence, and take him before a justice, and make complaint of such offence, on oath, in writing.
Sec. " 3	Sec. " 3.	Every conductor, master or superior officer in charge of any such railway car or steamboat, who makes default in the discharge of any such duty is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than twenty dollars.
Sec. " 4	Sec. " 4.	*It shall be the duty* of every person who owns or works any such railway car or steamboat to keep a copy of this section posted up in some conspicuous part of such railway car or steamboat.
Sec. " 5	Sec. " 5.	Every person who makes default in the discharge of such duty is liable to a penalty not exceeding one hundred dollars, and not less than twenty dollars.
		Meaning Unchanged. (34*a*)

(34*a*) Verbal changes noted in italics.

Sec. 204. Sec. **235. Betting and pool-selling.** *Unchanged*

Sec. 205. Sec. **236. Lotteries.** —

Unchanged. (34*b*)

Sec. " 6 Sec. " 6. **Saving clause.** This section does not apply to:—

(*a*) the division by lot or chance of any property by joint tenants or tenants in common or persons having joint interests (droits indivis) in any such property; or

(*b*) raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council or from the mayor, reeve or other officer of the city, town or other municipality wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars;

(*c*) *the Art Union of London, Great Britain, or the Art Union of Ireland.*

Provincial Legislatures have no power to authorize the running of lotteries. (35)

Article 2920 of the Revised Statutes of Quebec, and the 53 Vic. c. 36, (Que.), in amendment thereof, made provision for the holding of certain bazaars and lotteries in aid of certain religious and charitable establishments. But it was held that this legislation was *ultra vires* the Quebec Legislature and an unconstitutional encroachment upon the powers of the Dominion Parliament, which alone has the power to legislate on the subject of lotteries; and the Quebec statutes have since been repealed by the 59 Vic., (Que.), c. 26. (36)

Where a defendant placed in his shop window a sealed glass jar full of buttons of different sizes, and offered to give, to anyone who should guess the nearest to the number of buttons contained in the jar, a pony and cart, the successful guesser being required to purchase goods of the defendant to a certain amount, it was held that as the approximation of the number of buttons depend-

(34*b*) Except subsection 6 here set out in full. Alteration Italicized.

(35) Brault v. St-Jean Baptiste Assoc. of Montreal, 4 Can. Cr. Cas., 284.

(36) Pigeon v. Mainville, & Mainville v. Poitras, 17 L. N., 68. See R. v. Harper, Que. Off. Rep., 1 S. C., 327.

ed on the exercise of judgment, observation and mental effort, this was not a MODE OF CHANCE for disposing of property. (37)

A sweepstake for money prizes in respect of winning horses in a steeplechase is, where the person suffering it to be drawn makes a profit, an unlawful lottery. (38)

Where tickets for a drawing by lot are sold as part of a scheme for the disposal of goods and the holder of the winning ticket, by the conditions of the drawing, must shoot a turkey at fifty yards in five shots in order to win the prize, such a condition does not necessarily take the case out of the lottery sections of the Criminal Code. It is a question for the jury whether such condition was imposed as a contest of skill, or as a mere pretence in evasion of the lottery law. (39)

A competition for a prize offered for the nearest estimates of the number of votes to be cast at a coming election and the sale of certificates of admission thereto in consideration of money paid or services performed is not a lottery under section 205 (now 236) of the Code. (40)

The advertizing by a firm of shopkeepers in a newspaper of a prize to be awarded, free of cost, to the one of their customers who could make the nearest guess to the number of their cash sales on a given day is not a violation of the provisions of the Criminal Code prohibiting lotteries. (41)

Sec. 206. Sec. **237. Not burying the dead; offering indignity to dead body or human remains.** *Unchanged.*

VAGRANCY.

Sec. 207. Sec. **238. Vagrancy defined.** *Unchanged.* (42)

Sec. 208. Sec. **239. Vagrancy, — punishment of.** *Unchanged in effect.*

A summary conviction for being a loose idle person, or vagrant, without specifying in what the vagrancy consisted, is void for uncertainty. (43)

To constitute a wilful refusal or neglect by a husband to maintain his wife, there must be an absence af any reasonable ground for believing the refusal or neglect to be lawful. A husband, who

(37) R. v. Jamieson, 7 Ont. R., 149.
(38) Hardwick v. Lane, [1904], 1 K. B., 204.
(39) R. v. Johnson, 6 Can. Cr. Cas., 48.
(40) R. v. Johnston, 7 Can. Cr. Cas., 525.
(41) R. v. Fish et al., 11 Can. Cr. Cas., 201.
(42) Except that subsection 2 of the old section 207, — defining "public place," — is made into subsection (*c*) of sec. 197 of the new Act. (See p. 38, *ante*).
(43) R. v. McCormack, 7 Can. Cr. Cas., 135; R. v. Harkness, 12 C. C. C., 54.

has been adjudged by a civil court, in an action brought by his wife for separation, to pay his wife an interim alimentary allowance, is relieved from that liability, in the province of Quebec, on proof that the wife is supporting herself by immorality; and a criminal prosecution against him for non support will be dismissed on the like proof. (44)

Where a body of students march upon a sidewalk in files of four with arms linked, any of them may be properly convicted of an offence against a municipal by-law prohibiting "walking or marching in a group or near to each other on the sidewalk so as to obstruct a free passage for foot passengers," although sufficient space remained for persons walking in single file to pass thereon. (45)

There is no legal right at common law for persons to assemble in any numbers upon a highway and to remain assembled there as long as they please to the detriment of others having equal rights of passage over the highway. And it has been held in Nova Scotia that an assembly of a religious character, for instance, the Salvation Army, is subject to this rule, and that members thereof who hold a religious service on a town street and thereby collect a crowd which blocks the free passage of the street are properly convicted under a statute prohibiting persons from standing in a group or near to each other on the street so as to obstruct a free passage for carriages, etc. (46)

It has been held, however, that the mere fact of holding a meeting in a street does not necessarily imply the impeding or incommoding of peaceable passengers, and proof of actual impeding or incommoding is essential to justify a conviction. The law of vagrancy does not apply to persons of general good character, but is intended to apply to loose idle and disorderly persons only. (47)

Slandering a person in a restaurant, open to the public, is not an offence under Vagrancy clauses of the Code, either as an obstruction to passengers by using insulting language or as a disturbance incommoding passengers. (48)

A restaurant open to the public is not a public place within the meaning of the section. (49)

A conviction for vagrancy under section 238, clause (*l*) is not warranted where the accused had, at the time of his arrest, sufficient money for his immediate wants and had been regularly employed in another city until two months prior thereto, although he

(44) *Anon.*, (H — v. H.), 6 Can. Cr. Cas., 163.
(45) R. v. Yates, 6 Can. Cr. Cas., 282.
(46) R. v. Watson & Kenway, 6 Can. Cr. Cas., 331.
(47) R. v. Kneeland, 6 Can. Cr. Cas., 81.
(48) R. v. Mercier, 6 Can. Cr. Cas., 44.
(49) *Ib.*

was shown to have been an associate of pickpockets in the city from which he came. (50)

A summary conviction for vagrancy is bad, if made upon evidence not reduced to writing. (50*a*)

It has been held that a recorder, — in condemning an accused to pay a fine and costs, for vagrancy and to imprisonment in case of non-payment, — has no right to impose, as a condition of the discharge of the accused, at the expiry of the fixed term of imprisonment, the payment of such costs and of expenses of conveyance to gaol, and such conviction will be quashed on certiorari. (50*b*)

PART VI.

OFFENCES AGAINST THE PERSON AND REPUTATION

Interpretation.

Sec. **240.** **Definitions.** — In this Part, unless the context requires.

Sec. 275. 2. " (*a*) '**form of marriage**' includes any form either recognized as a valid form by the law of the place where it is gone through or which, though not so recognized, is such that a marriage celebrated there in that form is recognized as binding by the law of the place where the offender is tried:

Unchanged. (50*c*)

Sec. 210. 3. Sec. **240.** (*b*) '**guardian**' includes any person who has in law or in fact the custody or control of any child referred to

Same as sec. 197 (b), ante.

Sec. 216. 2. Sec. " (*c*) '**abandon**' or '**expose**' includes a wilful omission to take charge of any child referred to, on the part of a person legally bound to take charge of such child, as well as any mode of dealing with it calculated to leave it exposed to risk without protection. *Unchanged.*

(50) R. v. Collett, 10 Can. Cr. Cas., 286; 10 Ont. L. R., 718.
(50*a*) R. v. McGregor, 10 Can. Cr. Cas., 313.
(50*b*) Leonard v. Pelletier, 9 Can. Cr. Cas., 19.
(50*c*) But it contains only the first five lines of subsection 2 of the old sec. 275.

DUTIES TENDING TO THE PRESERVATION OF LIFE.

Sec. 209 Sec. **241. Duty of persons in charge of others to provide necessaries of life.** *Unchanged.*

Sec. 210. Sec. **242. Duty of head of family to provide necessaries.** *Unchanged.* (51)

Sec. 211. Sec. **243. Duty of masters to provide necessaries.** *Unchanged.*

Sec. 215. Sec. **244. Omitting duty to provide necessaries.** *Unchanged.*

Medical attendance and remedies are necessaries within the meaning of sections 241 and 242; and any one legally liable to provide such is criminally responsible for neglect to do so, as well under the common law as under the Criminal Code. Conscientious belief that it is against the teachings of the Bible and therefore wrong to have recourse to medical attendance and remedies is no excuse. (52)

A parent who omits to provide his child, under sixteen, with medicines and medical treatment when reasonably necessary and when the parent is able to provide the same, is thereby guilty of criminal neglect, amounting to manslaughter, if the death of the child is the result thereof; and a conscientious objection to medical treatment because of a belief in the doctrines of "Christian Scientists," is not a lawful excuse for the omission. (53)

When the husband's failure to support his wife caused no injury to the wife's health, she having been maintained by the charity of friends on the husband's default, such default does not give rise to criminal responsibility under sections 210 and 215 (now sections 242 and 244) of the Code. (54)

Sec. 216. Sec. **245. Abandoning children under two years old.** *Unchanged.* (55)

Sec. 212. Sec. **246. Duty of persons undertaking acts dangerous to life.** *Unchanged.*

Sec. 213. Sec. **247. Duty of persons in charge of dangerous things.** *Unchanged.*

Sec. 214. Sec. **248. Duty to avoid omissions dangerous to life.** *Unchanged.*

It has been held by the Supreme Court of Canada, (confirming a judgment of the Supreme Court of British Columbia in the case

(51) Except that subsection 3 of sec. 210 of the old law is here omitted, having been made into subsection (*b*) of sec. 240 of the new law. (See p. 53, *ante*).

(52) R. v. Brooks, 3 Can. Cr. Cas., 372.

(53) R. v. Lewis, 7 Can. Cr. Cas., 201.

(54) R. v. Wilkes, 11 Can. Cr. Cas., 226.

(55) Except that subsec. 2 of the old section is here omitted, having been made into subsec. (*c*) of sec. 240, *ante*.

of the Queen v. Union Colliery Co., 3 Can. Cr. Cas., 523) that, under section 213 (now 247) of the Criminal Code, a Corporation may be indicted for omitting without lawful excuse to perform the duty of avoiding danger to human life from anything in its charge or under its control and that the fact that the consequence of the omission to perform such duty might have justified an indictment for manslaughter in the case of an individual is not a ground for quashing the indictment, and further that as the Criminal Code provides no punishment for the offence, the common law punishment of a fine may be imposed on a corporation indicted under it. (56)

Sec. 217. Sec. **249. Causing bodily harm to apprentices or servants.** *Unchanged.*

HOMICIDE.

Sec. 218. Sec. **250. Homicide defined.** *Unchanged.*

Sec. 219. Sec. **251. When a child becomes a human being.** *Unchanged.* (57)

Sec. 220. Sec. **252. Culpable and non-culpable homicide.** *Unchanged.*

Sec. 221. Sec. **253. Procuring death by false evidence.** *Unchanged.*

Sec. 222. Sec. **254. Death must be within a year and a day.** *Unchanged.* (58)

Sec. 223. Sec. **255. Killing by influence on the mind.** *Unchanged.*

Sec. 224. Sec. **256. Acceleration of death.** *Unchanged.*

Sec. 225. Sec. **257. Death which might have been prevented.** *Unchanged.*

Sec. 226. Sec. **258. Death following treatment of injury inflicted.** *Unchanged.*

MURDER AND MANSLAUGHTER.

Sec. 227. Sec. **259. Murder defined.** *Unchanged.*

Sec. 228. Sec. **260. Culpable homicide is also murder in certain special cases.** In case of treason and the other offences against the King's authority and person mentioned in Part II, piracy and offences deemed to be piracy, escape or rescue from prison or lawful custody, resisting lawful apprehension, murder, rape, forcible ab-

(56) Union Colliery Co. v. R., 31 Can. S. C. R., 81.
(57) Except that the section is divided into two paragraphs.
(58) Except that the section is divided into four paragraphs.

duction, robbery, burglary or arson, culpable homicide is also murder, whether the offender means or not death to ensue, or knows or not that death is likely to ensue, —

(*a*) if he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or

(*b*) if he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or

(*c*) if he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath.

Slightly changed.

On a trial for murder, if the fact of the death of a human being is established, by direct proof, and the remains of the dead man have been so destroyed by fire that direct identification is impossible, circumstantial evidence is admissible to prove the identity of the remains and also the identity of the person who caused the death. While the fact of death must always be established by direct proof, the fact of the killing by the defendant as alleged may be proved by circumstantial evidence supporting the charge beyond a reasonable doubt. (59)

An indictment charged a person with encouraging persons unknown to murder the sovereigns and rulers of Europe. Held that the indictment was good, as a sufficiently well-defined class was referred to by the words "sovereigns of Europe." (59*a*)

Where two persons are jointly indicted for murder and one pleads "guilty" and the other "not guilty"; and the trial, upon the latter plea, results in an acquittal, leave should be given to the other accused to change his plea to one of "not guilty," if the circumstances are such that the verdict of acquittal already given in respect of the one would be inconsistent with the guilt of the other. (60)

Where a package of revolvers was thrown into a carriage in which three prisoners conjointly charged with a crime were being

(59) R. v. King, 9 Can. Cr. Cas., 426; Can. Ann. Dig., [1905] 94.
(59*a*) R. v. Antonelli, 70 J. P., 4.
(60) R. v. Herbert, 6 Can. Cr. Cas., 214.

conveyed under lawful arrest and the prisoners all struggled to obtain revolvers, two of them succeeding in doing so, whereupon all of them attempted to effect a forcible escape during which one of the peace officers was shot dead by one of the prisoners but by which of them is unknown, proof that the defendant had one of the revolvers in the melee and had ordered another of the peace officers present to "give up" immediately after another of the prisoners had told the defendant to "give it to him" is, with such facts, sufficient evidence of a conspiracy by the three prisoners for an unlawful purpose, to wit, the escape, and of a common design to use for its accomplishment any amount of violence and force; and a conviction of the defendant for murder is, therefore, proper without proof that he fired the fatal shot.

It was proper for the trial Judge to instruct the jury that "where all the parties proceed with the intention to commit an unlawful act and with the resolution or determination to overcome all opposition by force, that if by reason of such resolution one of the party is guilty of homicide, his companions would be liable to the penalty which he has incurred."

The shooting of the constable by one of the conspirators, in the prosecution of such common purpose was an act which was or ought to have been known to be a probable consequence of prosecuting such purpose, and each of the conspirators become under Criminal Code, sec. 61 (2), — now section 69 (2), — a party to the homicide. (61)

Where the accused charged with murder goes into the witness box on his own behalf, and then and there for the first time makes known his claim that he was a mere eye-witness of the murder, and that the principal witness for the prosecution had committed the deed, the trial judge may properly direct the jury that they may draw inferences from the prisoner's previous silence on the matter of such claim, and consider whether the facts in evidence shewed the motive for such silence to be founded on a consciousness of innocence, *ex. gr.*, that he would thereby the better establish his innocence, or to be a design founded on a knowledge of guilt to advance a false defence at the last moment, and to take the prosecution by surprise.

Even if the charge were erroneous in that respect, a new trial should not be granted if there was ample evidence of guilt apart from that question, and if, in the opinion of the Court of Appeal, no substantial wrong or miscarriage was occasioned by the error. (62)

(61) R. v. Rice, 5 Can. Cr. Cas., 509.
(62) R. v. Higgins, 36 N. B. R., 18; 7 Can. Cr. Cas., 68.

Where two persons mutually agree to commit suicide, and only one of the two accomplishes that object, the survivor is guilty of murder, according to the law of England. (63) But this is not so in our law. See section 269, *post*, which makes aiding and abetting suicide a specific offence, punishable by imprisonment for life.

CIRCUMSTANTIAL EVIDENCE.

In order to justify a finding of guilt from purely circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and must be incapable of explanation upon any other reasonable hypothesis than that of guilt. (64)

Sec. 229. Sec. **261. Provocation.** *Unchanged.* (65)
Sec. 230. Sec. **262. Manslaughter.** *Unchanged.*
Sec. 231. Sec. **263. Punishment for Murder.** *Unchanged.*
Sec. 232. Sec. **264. Attempts to murder.** *Unchanged.*
Sec. 233. Sec. **265. Letters threatening murder.** *Unchanged.*
Sec. 234. Sec. **266. Conspiracy to murder and counselling murder.** *Unchanged.*
Sec. 235. Sec. **267. Accessory after the fact to murder.** *Unchanged.*
Sec. 236. Sec. **268. Punishment for manslaughter.** *Unchanged.*

SUICIDE.

Sec. 237. Sec. **269. Counselling or aiding or abetting the commission of suicide.** *Unchanged.*
Sec. 238. Sec. **270. Attempt to commit suicide.** *Unchanged.*

NEGLECT IN CHILDBIRTH AND CONCEALING DEAD BODY.

Sec. 239. Sec. **271. Neglect to obtain assistance in childbirth.** *Unchanged.*
Sec. 240. Sec. **272. Concealing dead body of child.** *Unchanged.*

To constitute the offence of concealment of birth, there must be a concealment of the fact of the birth, and that concealment must be carried out by the secret disposition of the dead body. The secret disposition must be of such a nature that any one coming to the place where the body is would not be likely to see it. (66)

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(63) R. v. Abbott, 67 J. P., 151.
(64) R. v. Telford, 8 Can. Cr. Cas., 223.
(65) Except slightly in the wording thereof, and without altering the meaning and effect.
(66) R. v. Rosenberg, 70 J. P., 264.

BODILY INJURIES AND ACTS AND OMISSIONS CAUSING DANGER TO THE PERSON.

Sec. 241. Sec. **273. Wounding or shooting at a person with intent.** *Unchanged.*

Sec. 242. Sec. **274. Wounding.** *Unchanged.*

Upon an indictment for wounding by shooting with intent to disable, under section 241 (now section 273) of the Code, the jury is properly instructed that, if such intent is negatived, the accused may still be convicted of the simple offence of wounding under section 242 (now section 274), if the jury find that he pointed a loaded gun, and fired it at another and either knew or ought to have known that the gun was loaded. A verdict of "guilty, without malicious intent," upon such an indictment, was held to be a verdict of guilty of such lesser offence. (67)

But this was reversed in appeal, — the Supreme Court of Canada holding that the verdict of "guilty without malicious intent" was equivalent to a verdict of acquittal of the charge laid in the indictment, namely, that of wounding with intent to disable. (68)

Upon a charge of shooting with intent to do grievous bodily harm, in which the plea is self-defence, it is a question for the jury whether the assault upon the accused, which had provoked the shooting, had ended or was still being pursued. It is a mis-direction to charge the jury that, to support a plea of self-defence to the infliction of grievous bodily harm, they must find that the accused could not otherwise have preserved himself from death or grievous bodily harm, it being sufficient justification if the accused had a reasonable apprehension of grievous bodily harm to himself from the violence of the assault upon him and if he believed on reasonable grounds that he could not preserve himself from grievous bodily harm otherwise than by inflicting grievous bodily harm upon his assailant. (69)

Sec. 243. Sec. **275. Shooting at the King's vessels. — Wounding public officer on duty.** *Unchanged.*

To justify a sentence of more than three years imprisonment for assault and wounding a public officer, the charge must allege that the offence was committed while the officer was engaged in the execution of his duty.

A mere description of the assaulted party in the information as an acting detective does not justify a sentence of seven years on a

(67) R. v. Slaughenwhite, (No. 1), 9 Can. Cr. Cas., 53.

(68) R. v. Slaughenwhite, (No. 2), or Slaughenwhite v. R., 9 Can. Cr. Cas., 173.

(69) R. v. Ritter, 8 Can. Cr. Cas., 31.

plea of guilty, nor does it imply that the assault took place while the officer was engaged in the execution of his duty. (70)

Sec. 244. Sec. **276. Disabling or drugging with intent to commit any indictable offence.** *Unchanged.*

Sec. 245. Sec. **277. Administering poison, etc., so as to endanger life or inflict grievous bodily harm.** *Unchanged.*

Sec. 246. Sec. **278. Administering poison, etc., with intent to injure or annoy.** *Unchanged.*

Sec. 247. Sec. **279. Causing bodily injuries by explosives.** *Unchanged.*

Sec. 248. Sec. **280. Attempt to cause bodily injuries by explosives.** Every one who unlawfully, —

(*a*) with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person whether any bodily harm is effected or not;

(i) causes any explosive substance to explode,

(ii) sends or delivers to, or causes to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing,

(iii) puts or lays at any place, or casts or throws at or upon, or otherwise applies to any person any corrosive fluid, or any destructive or explosive substance; or

(*b*) places or throws in, into, upon, against or near any building, ship or vessel an explosive substance, with intent to do any bodily injury to any person, whether or not any explosion takes place and whether or not any bodily injury is effected,

is guilty of an indictable offence and liable, in cases within paragraph (*a*) of this section, to imprisonment for life, and in cases within paragraph (*b*) of this section, to fourteen years' imprisonment.

Changed, (as here set forth).

Sec. 249. Sec. **281. Setting Spring Guns and Man-Traps.** *Unchanged.*

(70) R. v. Dupont, 4 Can. Cr. Cas., 566.

2ND EDIT.	REVISED STATUTES 1906	REMARKS
Sec. 250.	Sec. **282.** **Intentionally endangering the safety of persons on railways.**	*Unchanged.*
Sec. 251.	Sec. **283.** **Negligently endangering the safety of persons on railways.**	*Unchanged.*
Sec. 252.	Sec. **284.** **Negligently causing bodily injury to any person.**	*Unchanged.*
Sec. 253.	Sec. **285.** **Injuring persons by furious driving.**	*Unchanged.*
Sec. 254.	Sec. **286.** **Impeding shipwrecked person.**	*Unchanged.*
Sec. 255.	Sec. **287.** **Unguarded holes in ice, and unguarded mines out of use.**	*Unchanged.* (70*a*)
Sec. 256.	Sec. **288.** **Sending unseaworthy ships to sea.**	*Unchanged.*
Sec. 257.	Sec. **289.** **Taking unseaworthy ships to sea.**	*Unchanged.*

ASSAULTS.

Sec. 258.	Sec. **290.** **Assault defined.**	*Unchanged.*
Sec. 265.	Sec. **291.** **Common Assaults. — Punishment.**	*Unchanged.*
Sec. 259.	Sec. **292.** **Indecent assault on female.**	*Unchanged.*
Sec. 260.	Sec. **293.** **Indecent assaults on males.**	*Unchanged.*
Sec. 261.	Sec. **294.** **Consent of child under fourteen no defence.**	*Unchanged.*

It is not essential, in all cases of indecent assault, that complaint should have been made at the earliest opportunity after the offence, and, under special circumstances, evidence may be received of such complaint made after the lapse of several days. (71) Thus, the fact of the girl being only seven years of age, that the act was committed without violence and that the girl did not realize the serious nature of the act, are circumstances which make a complaint made ten days afterwards admissible in evidence. (72)

Sec. 262.	Sec. **295.** **Assaults occasioning bodily harm.**	*Unchanged.*
Sec. 263.	Sec. **296.** **Aggravated Assault.**	*Unchanged.*
Sec. 264.	Sec. **297.** **Kidnapping.**	*Unchanged.*

(70*a*) With the exception of a verbal alteration in par. (*b*), and with the exception of the addition of the words " or unenclosed " at the end of the section.

(71) R. v. Barron, 9 Can. Cr. Cas., 196. And see R. v. Smith, 9 Can. Cr. Cas., 21.

(72) *Ib.*

UNLAWFUL CARNAL KNOWLEDGE.

Sec. 266. Sec. **298. Rape defined.** *Unchanged.*
Sec. 267. Sec. **299. Punishment for Rape.** *Unchanged.*
Sec. 268. Sec. **300. Attempt to commit Rape.** *Unchanged.*
Sec. 269. Sec. **301. Carnally knowing girl under fourteen.** *Unchanged.*
Sec. 270. Sec. **302. Attempt to carnally know girl under fourteen.** *Unchanged.*

The expression "not being his wife" used in section 301 is an exception, and if required to be stated in the indictment, and negatived, the omission thereof would be a defect which could be remedied by the Judge by an amendment under section 889: so that, where no objection is taken by the defendant before pleading, the omission of the words will not invalidate a conviction upon such an indictment. The objection thereto should be taken, by the defendant's counsel, before plea, by demurrer or by a motion to quash: and then the Court could have amended the indictment, and, not having done so, it was not open to him to take it subsequently. (73)

An accused was committed for trial upon a charge of "unlawful assault with intent to carnally know." On the accused wishing to make election for speedy trial, the Crown contended that the charge was not one in which a speedy trial could be had, as it not only amounted, by its description in the warrant of commitment, to the charge of "attempt to commit rape," but it was the Crown's intention to indict the accused for this offence. Held that though the charge as worded in the commitment might be either that of "assault with intent to commit an indictable offence," punishable under section 263 (now section 296), and, as such, capable of speedy trial, or that of "attempt to commit rape," punishable under section 268 (now section 300) and, as such, not capable of speedy trial, the Court refused to receive the accused's election of speedy trial and left the responsibility with the Crown of preferring an indictment for the more serious charge. (74)

Where the depositions on which the indictment for rape is founded shew that the prosecutrix's statements, relied upon by the Crown to shew that a complaint was made, were not spontaneous, but made in answer to questions by the police officer, evidence of her answers so made is inadmissible against the accused. (75)

On a charge of rape, evidence is inadmissible, for the defence, of the general bad reputation of the prosecutrix for unchastity. (76)

(73) R. v. Wright, 11 Can. Cr. Cas., 221; 39 N. S. R., 103.
(74) R. v. Preston, 9 Can. Cr. Cas., 201.
(75) R. v. Bishop et al., 11 Can. Cr. Cas., 30.
(76) R. v. Bishop et al., *Ib.*

On a charge of aiding and abetting another to commit rape, if it appears that a man called as a witness for the prosecution had immediately prior to the offence been in the company of the prosecutrix under circumstances making it probable that he had had illicit connection with her, and that the man accused of the rape had taken the prosecutrix away from the witness, the witness may be cross-examined as to his relations with the prosecutrix for the purpose of shewing prejudice against the accused, and for this purpose is bound to answer whether he had had connection with the prosecutrix on that occasion. (76*a*)

ABORTION.

Sec. 272. Sec. **303. Using means to procure abortion.** *Unchanged.* (77)

Sec. 273. Sec. **304. Woman using means to procure abortion on herself.** *Unchanged.*

Sec. 274. Sec. **305. Supplying means to procure abortion.** *Unchanged.*

Sec. 271. Sec. **306. Killing Unborn Child.** *Unchanged.*

OFFENCES AGAINST CONJUGAL RIGHTS.

Sec. 275. Sec. **307. Bigamy defined.** Bigamy is, —

(*a*) the act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or

(*b*) the act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or

(*c*) the act of a person who goes through a form of marriage with more than one person simultaneously, or on the same day.

2. The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

3. No one commits bigamy by going through a form of marriage, —

(*a*) if he or she in good faith and on reason-

(76*a*) R. v. Finnessey, 10 Can. Cr. Cas., 347.

(77) Except in the wording and without altering the meaning and effect.

able grounds believes his wife or her husband to be dead; or

(*b*) if his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or

(*c*) if he or she has been divorced from the bond of the first marriage; or

(*d*) if the former marriage has been declared void by a court of competent jurisdiction.

4. No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

Meaning Unchanged. (77*a*)

5. Every form of marriage shall for the purpose of this section be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form.

Sec. 276. Sec. **308. Punishment of bigamy.** *Unchanged.*

A guilty mind is an essential ingredient of the offence of bigamy, and if a woman, after obtaining information that the man with whom she has gone through a form of marriage is already married, leaves him and marries another man, her honest and reasonable belief that the man she left had a wife living, is a good defence to a charge of bigamy; and it seems that the fact of such honest and reasonable belief may be found from the circumstances of the case, without strict proof of the man's former marriage. (78)

Where both parties to a marriage in Canada are of Canadian domicile, but afterwards become *bona fide* domiciled in a foreign country, a decree of divorce obtained in the foreign country, while they are domiciled there, will be valid in Canada as a defence to a prosecution of either of them for bigamy in having re-married.

A decree of divorce granted by a court foreign to the domicile of both parties, pronounced by consent or collusion of the parties both temporarily within its jurisdiction and which recites due proof of

(77*a*) But the first sentence of subsection 2 of the old sec. 275, as to 'form of marriage' is made into par. (*a*) of section 240, *ante*.

(78) R. v. Sellars, 9 Can. Cr. Cas., 153.

grounds sufficient under the foreign law for dissolving a marriage, is invalid in Canada, if it be proved that such recital is incorrect, and that, in fact, no evidence was given. (79)

Sec. 277. Sec. **309. Feigned marriages.** *Unchanged.*

Sec. 278. Sec. **310. Polygamy.** *Unchanged.*

It has recently been held by a district magistrate in the province of Quebec, that a man who, after going through the form of marriage with a woman known to him to be the wife of another man, cohabits with her in open continuous adultery in Canada claiming to be her second husband and falsely pretending that she had obtained a divorce, is properly convicted of unlawfully cohabiting in conjugal union by an illegal form of contract and by mutual consent, contrary to the provisions of the Code prohibiting polygamy. (80)

The accused, in this case, may have been guilty of bigamy, if his pretension that the woman had obtained a divorce from her first husband were shewn to be false to his (the accused's) knowledge; but, in view of several previous decisions to the effect that section 278 (now section 310) of the Code was intended to apply to Mormons, the district magistrate's holding does not seem to be correct. (81)

UNLAWFUL SOLEMNIZATION OF MARRIAGE.

Sec. 279. Sec. **311. Solemnization of marriage without lawful authority.** *Unchanged.*

Sec. 280. Sec. **312. Solemnization of marriage contrary to law.** *Unchanged.*

ABDUCTION.

Sec. 281. Sec. **313. Abduction of a woman of any age.** *Unchanged.*

Sec. 282. Sec. **314. Abduction of an heiress from motives of lucre; and allurement and taking or detaining of a woman under twenty-one against the will of her parents.** *Unchanged.*

Sec. 283. Sec. **315. Abduction of girl under sixteen.** *Unchanged.*

Where there is no abduction by force, there must be persuasion by the accused by blandishment or otherwise, to constitute an offence of constructive abduction under this section; and if, without such persuasion, the girl suggests going away with him, and he

(79) R. v. Woods, 7 Can. Cr. Cas., 226.

(80) R. v. John Harris, 11 Can. Cr. Cas., 254.

(81) R. v. Labrie, Mont. Law R., 7 Q. B., 211; R. v. Liston, 34 L. C. J., 546.

thereupon takes the merely passive part of yielding to the suggestion, it is not an offence under the section. (82)

Sec. 284. Sec. **316. Abduction of children under fourteen.** Every one is guilty of an indictable offence and liable to seven years imprisonment who, with intent to deprive any parent or guardian of any child under the age of fourteen years, of the possession of such child, or with intent to steal any article about or on the person of such child, unlawfully,—

(*a*) takes or entices away or detains any child; or

(*b*) receives or harbours any such child, knowing it to have been unlawfully taken, enticed away or detained with intent aforesaid.

2. Nothing in this section shall extend to any one who gets possession of any child, claiming in good faith a right to the possession of the child.

Slightly changed, (not in meaning but in the wording), as here set forth.

The child's own father may be guilty of child stealing within the above section of the Code, if, after a divorce by a court of competent jurisdiction and the award thereon of the custody of the child to the mother, the father wilfully removes the child from her custody. (83)

A father having, under the law of the province of Quebec, the care of his minor children may, with the consent of the management of the school, place his child in a reformatory school authorized, under the old section 956 (now section 29 of the *Prisons and Reformatories Act*), for the commitment of youthful offenders; and the detention of the child for the purposes of discipline and subject to release by the father at any time, will not be interfered with by *habeas corpus* issued on behalf of the child by his mother. (84)

DEFAMATORY LIBEL.

Sec. 285. Sec. **317. Defamatory Libel defined.** *Unchanged.*

Sec. 286. Sec. **318. Publishing defined.** *Unchanged.*

Sec. 287. Sec. **319. Publishing on invitation or challenge.** *Unchanged.*

(82) R. v. Jarvis, 20 Cox C. C., 249.
(83) R. v. Watts, 5 Can. Cr. Cas., 246.
(84) *Re* A. B., 9 Can. Cr. Cas., 390.

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Sec. 288. Sec. **320. Publishing proceedings of Courts of Justice.** *Unchanged.*

Sec. 289. Sec. **321. Publishing parliamentary papers.** *Unchanged.*

Sec. 290. Sec. **322. Fair Reports of proceedings of Parliament and of Courts.** *Unchanged.*

The Court has power summarily to commit for constructive contempt, notwithstanding sections 322, 324 and 325 of the Code, as to fair reports of court proceedings and fair comment upon public affairs; but the Court will not exercise the power where the offence is of a trifling nature, but only when necessary to prevent interference with the course of justice.

A statement in a newspaper editorial to the effect that one of the parties to a pending suit will lose the case, is a contempt of Court.

A statement to the effect that a Judge of the Court having taken an active part in a general election, would have to devote his spare moments to schooling himself into forgetfulness of his political career, is not a contempt.

A statement to the effect that the spectacle of such Judge trying election cases is not edifying and that it does not produce a good impression in the public mind, is not a contempt.

A party to a suit has a status to move to commit a stranger to the suit for constructive contempt, although no affidavit is filed by him or on his behalf to the effect that the alleged contempt is calculated to prejudice him in his suit.

Any person may bring to the notice of the Court any alleged contempt; but, unless the offence is of so serious a nature as to make it necessary to inflict summary punishment in order to prevent interference with the course of justice, there should be no committal. (85)

Where a jury disagreed upon the trial of an indictment and a new jury was ordered for another sitting the case is in the meantime still a pending one; and improper and partial newspaper comments thereon passed by one of the accused will constitute a contempt of court by him. The court in imposing sentence upon a newspaper proprietor for a contempt of court contained in a newspaper comment may, in addition to the infliction of a fine and imprisonment, require the accused to find sureties to keep the peace and to refrain from publishing further articles reflecting on the pending case and may order imprisonment for six months or until security is sooner given or until the pending cause is sooner ended. (86)

(85) Stoddard v. Prentice, 5 Can. Cr. Cas., 103.
(86) R. v. Charlier, 6 Can. Cr. Cas., 486; Que. Off. Rep., 12 K. B., 383.

It has been held, in England, that the High Court of Justice there has jurisdiction to grant a writ of attachment against a person who publishes improper comments with reference to the defendant in a case, pending before justices, which may possibly, though not necessarily, come before the High Court. (87)

A reception order having been made under the *Imperial Lunacy Act*, 1890, proceedings were taken under section 49 of the Act for the examination of the patient by two medical practitioners appointed by the Commissioners in Lunacy with a view to his discharge. Reports were made by two medical practitioners under the section, but the Commissioners refused to order the discharge of the patient. A newspaper subsequently published the two reports in an article commenting on the detention of the patient. A day before the publication of the reports an application was made under section 116 of the Act for the appointment of a receiver of the patient's property during his detention, and the reports of the two doctors were made exhibits to an affidavit in these proceedings. Neither the publisher nor the editor of the newspaper knew of these proceedings under section 116, nor did the articles discuss such proceedings. Upon an application to commit for contempt of Court in publishing the reports of the doctors and the article, it was held that, as the proceedings under sec. 49 were concluded, it was not a contempt of Court to publish the reports and the article, and that, as to the pending proceedings under sec. 116, there was no evidence that the respondents knew of those proceedings, and they were therefore not guilty of contempt. (88)

Where a person having been charged before the petty sessions with an indictable offence, triable only at the assizes, matter is published in a newspaper tending to interfere with the fair trial of the charge, the High Court has jurisdiction to attach the publisher of such matter, for contempt of court, notwithstanding that, at the time of the publication the person had not yet been committed for trial. (89)

Sec. 291. Sec. **323. Fair reports of public meetings.** *Unchanged.*

Sec. 292. Sec. **324. Public Benefit.** *Unchanged.*

Sec. 293. Sec. **325. Fair comment on public person, or on works of literature or art, etc.** *Unchanged.*

(87) R. v. Davies, [1906] 1 K. B., 32; 75 L. J., K. B., 104; 22 T. L. R., 97.

(88) *In re* Townshend, (*Marquis*), 22 T. L. R., 341; Mews Ann. Dig., [1906] 61.

(89) R. v. Parke, 72 L. J., K. B., 839; [1903] 2 K. B., 432.

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Sec. 294.	Sec. 326. **Publication seeking remedy for grievance.**	*Unchanged.* (90)
Sec. 295.	Sec. 327. **Answers to enquiries.**	*Unchanged.*
Sec. 296.	Sec. 328. **Giving Information.**	*Unchanged.*
Sec. 297.	Sec. 329. **Newspaper proprietor presumed responsible for defamatory matter published in his newspaper.**	*Unchanged.*
Sec. 298.	Sec. 330. **Selling books containing defamatory matter.**	*Unchanged.*
Sec. 299.	Sec. 331. **When truth is a defence.**	*Unchanged.*
Sec. 300.	Sec. 332. **Extortion by defamatory libel.**	*Unchanged.*
Sec. 301.	Sec. 333. **Punishment of defamatory libel known to be false.**	*Unchanged.*
Sec. 302.	Sec. 334. **Punishment of defamatory libel.**	*Unchanged.*

PART VII.

OFFENCES AGAINST RIGHTS OF PROPERTY AND RIGHTS ARISING OUT OF CONTRACTS, AND OFFENCES CONNECTED WITH TRADE.

Interpretation.

Sec. **335. Definitions.** — In this Part, unless the context otherwise requires, —

(*a*) '**act**', for the purposes of the sections relating to offences connected with trade and breaches of contract, includes a default, breach or omission; (1)

(*b*) '**Admiralty**' means the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of Lord High Admiral; (2)

(*c*) '**break**' means to break any part, internal or external, of a building, or to open by any means whatever (including lifting in the case of things kept in their places by their own weight) any door, window, shutter, cellar-flap or other thing intended to cover openings to a building or to give passage from one part of it to another. (3)

(90) Except that the clause "if the defamatory matter is believed by *him* to be true," — near the end of the section, is now worded as follows. "if the defamatory matter is believed by *the person publishing the same* to be true."

(1) Taken from the latter part of the old sec. 519.

(2) Taken from subsec. 5 of the old sec. 392.

(3) Taken from par. (b) of the old sec. 407.

(*d*) '**covering**' includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and '**label**' includes any brand or ticket; (4)

(*e*) '**dwelling-house**' means a permanent building, the whole or any part of which is kept by the owner or occupier for the residence therein of himself, his family or servants, or any of them, although it may at intervals be unoccupied; (5)

(*f*) '**document**' means any paper, parchment or other material used for writing or printing, marked with matter capable of being read, but does not include trade marks on articles of commerce, or inscriptions on stone or metal or other like material; (6)

(*g*) '**every one**,' '**vendor**,' '**purchaser**,' '**merchant**,' '**agent**,' or '**person**,' for the purposes of the sections relating to trading stamps, includes any partnership or company or body corporate; *Added.*

(*h*) '**exchequer bill**' includes exchequer bonds, notes, debentures and other securities issued under the authority of the Parliament of Canada, or under the authority of the legislature of any province forming part of Canada, whether before or after such province so became a part of Canada; (7)

(*i*) '**exchequer bill paper**' means any paper provided by the proper authority for the purpose of being used as exchequer bills, exchequer bonds, notes, debentures or other securities issued under the authority of the Parliament of Canada, or under the authority of the legislature of any province forming part of Canada, whether before or after such province became a part of Canada; (8)

(*j*) '**false document**' means

(*i*) a document the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof, or which, though made by, or by the authority of, the person who purports to make it, is falsely dated as to time or place of making, where either is material, or

(4) Taken from par. (*c*) of the old sec. 443.
(5) Taken from par. (*a*) of the old sec. 407.
(6) Taken from the old sec. 419.
(7) Taken from par. (*a*) of the old sec. 420.
(8) Taken from par. (*a*) of sec. 433 of the old Code.

(*ii*) a document, the whole or some material part of which purports to be made by or on behalf of some person who did not in fact exist, or

(*iii*) a document which is made in the name of an existing person, either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it; (9)

(*k*) '**false name or initials**' means, as applied to any goods, any name or initials of a person which

(*i*) are not a trade mark or part of a trade mark,

(*ii*) are identical with, or a colorable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials,

(*iii*) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods; (10)

(*l*) '**false trade description**' means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false in a material respect. and the fact that a trade description is a trade mark, or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Part; (11)

(*m*) '**goods**,' for the purposes of the sections relating to forgery of trade marks and fraudulent marking of merchandise, means anything which is merchandise or the subject of trade or manufacture; (12)

(*n*) '**name**' includes any abbreviation of a name; (13)

(*o*) '**person**', '**manufacturer**', '**dealer**', or '**trader**' and '**proprietor**' for the purposes of the sections relating to forgery of trade marks and fraudulent marking of merchandise, include any body of persons, corporate or not corporate; (14)

(9) Taken from the old sec. 421.
(10) Taken from the latter part of subsec. 3 of the old sec. 443.
(11) Taken from par. (*c*) of the old sec. 443.
(12) Taken from par. (*d*) of sec. 443 of the old Code.
(13) Taken from par. (*g*) of the old sec. 443.
(14) Taken from par. (*f*) of the old sec. 443.

(*p*) '**revenue paper**' means any paper provided by the proper authority for the purpose of being used for stamps, licenses or permits, or for any other purpose connected with the public revenue; (15)

(*q*) '**seaman**' means every person, not being a commissioned, warrant or subordinate officer, who is in or belongs to His Majesty's navy, and is borne on the books of any one of His Majesty's ships in commission, and every person, not being an officer, as aforesaid, who, being borne on the books of any hired vessel in His Majesty's service, is by virtue of any Act of Parliament of the United Kingdom for the time being in force for the discipline of the navy, subject to the provisions of such Act; (16)

(*r*) '**seaman's property**' means any clothes, slops, medals, necessaries or articles usually deemed to be necessaries for sailors on board ship, which belong to any seaman; (17)

(*s*) '**trade mark**' means a trade mark or industrial design registered in accordance with the Trade Mark and Design Act, and the registration whereof is in force under the provisions of the said Act, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of section 103 of the Act of the United Kingdom, known as The Patents, Designs and Trade Marks Act, 1883, are, in accordance with the provisions of the said Act, for the time being applicable; (18)

(*t*) '**trade description**' means any description, statement or other indication, direct or indirect;

(*i*) as to the number, quantity, measure, guage or weight of any goods,

(*ii*) as to the place or country in which any goods are made or produced,

(*iii*) as to the mode of manufacturing or producing any goods,

(*iv*) as to the material of which any goods are composed,

(15) Taken from par. (*b*) of the old sec. 433.
(16) Taken from subsec. 3 of the old sec. 392.
(17) Taken from subsec. 4 of the old sec. 392.
(18) Taken from par. (*a*) of the old sec. 443.

(*v*) as to any goods being the subject of an existing patent, privilege or copyright; (19)

(*u*) '**trading stamps**' includes, besides trading stamps commonly so called, any form of cash receipt, receipt, coupon, premium ticket or other device, designed or intended to be given to the purchaser of goods by the vendor thereof or his employee or agent, and to represent a discount on the price of such goods or a premium to the purchaser thereof, which is redeemable, either —

(i) by any person other than the vendor or the person from whom he purchased the goods or the manufacturer of the goods, or

(*ii*) by the vendor, or the person from whom he purchased the goods, or the manufacturer of the goods, in cash or goods not his property, or not his exclusive property, or

(iii) by the vendor elsewhere than in the premises where such goods are purchased; or which does not show upon its face the place of its delivery and the merchantable value thereof, or is not redeemable at any time; *Added.*

(*v*) '**watch**' for the purposes of the next succeeding section means all that portion of a watch which is not the watch case. (20)

2. An offer printed or marked by the manufacturer upon any wrapper, box, or receptacle, in which goods are sold, of a premium or reward for the return of such wrapper, box or receptacle, is not a trading stamp within the meaning of this Part. *Added.*

Sec. 444. Sec. **336. Words or marks on watch cases.** *Unchanged.* (21)

Sec. **337. 'Trade description.'** The use of any figure word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the matters hereinbefore referred to in the interpretation of the expression 'trade description' is a trade description within the meaning of this Part. (22)

(19) Taken from par. (*b*) of the old sec. 443.

(20) Taken from the latter part of the old sec. 444.

(21) Except that the latter part of the old sec. 444 is omitted, and made into paragraph (*v*) of sec. 336(*ante*) of the new Act.

(22) Taken from a portion of the old sec. 443.

Sec. 421. 1. Sec. **338. False document.** — To constitute a false document it is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence.

Slightly changed in the wording.

Sec. **339. Outbuilding.**—A building occupied with and within the same curtilage with any dwelling house, shall be deemed to be part of the said dwelling house, if there is, between such building and dwelling house, a communication either immediate or by means of a covered and inclosed passage leading from the one to the other, but not otherwise. (23)

Sec. **340. Entrance into a building.**—An entrance into a building is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by him, is within the building. (24)

Sec. " 2. **Entrance by artifice, etc.** — Every one who obtains entrance into any building by any threat or artifice used for that purpose or by collusion with any person in the building or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, shall be deemed to have broken and entered that building. (25)

APPLICATION OF PART.

Sec. **341. False Trade description by means of figures, words or marks.**— The provisions of this Part respecting the application of a false trade description to goods extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some

(23) Taken from clause (1) of par. (*a*) of the old sec. 407.
(24) Taken from clause (1) of par. (*b*) of the old sec. 407.
(25) Taken from clause (ii) of par. (*b*) of the old sec. 407.

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person other than the person whose manufacture or merchandise they really are. (26)

2. **False Trade description by means of false name or initials.** — The provisions of this Part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description. (27)

Sec. 455. Sec. **342.** **Trade description applied prior to 22nd May 1888.** *Unchanged.*

Sec. **343.** **Trading Stamps.** — The provisions of this Part with respect to trading stamps shall not apply to any trading stamps issued by a manufacturer or vendor before the first day of November 1905. *Added.*

THEFT.

Sec. 303 Sec. **344.** **Things capable of being stolen.** — Every inanimate thing whatever which is the property of any person, and which either is or may be made moveable, is capable of being stolen as soon as it becomes moveable, although it is made moveable in order to steal it; Provided that nothing growing out of the earth of a value not exceeding twenty-five cents shall, except in cases hereinafter provided, be deemed capable of being stolen.

Slightly changed in the wording.

Sec. 304. Sec. **345.** **Animals capable of being stolen.**

Sec. " -1. Sec. " **-1.** All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen; Provided that tame pigeons shall be capable of being stolen so long only as they are in a dovecot or on their owner's land.

Slightly changed in the wording.

(26) Taken from subsec. 2 of the old sec. 443.
(27) Taken from the first part of subsec. 3 of the old sec. 443.

Sec. " -2. Sec. " -2 } **Living creatures wild by nature and**
Sec. " -3. Sec. " -3. } **kept in a state of confinement.**
Sec. " -4. Sec. " -4. *Unchanged.*

Sec. " -6. Sec. " -5. **Wild creatures in enjoyment of their natural liberty.** *Unchanged.*

Sec. " -7. Sec. " -6. **Parts of living creatures.** *Unchanged.*

It has been held, in England, that ferrets are "animals kept in a state of confinement," under sections 21 and 22 of the Imperial *Larceny Act*, 1861, and that, therefore, persons, resisting apprehension by a police officer, who finds them in possession of a ferret, which they knew to be stolen are guilty of murder, if such resistance on their part results in the police officer's death. (28)

Sec. 304-5. Sec. **346.** **Oysters capable of being stolen.** *Unchanged.*

Sec. 305. Sec. **347.** **Theft defined.** Theft or stealing is the act of fraudulently and without color of right taking, or fraudulently and without color of right converting to the use of any person anything capable of being stolen, with intent,—

Sec. " (*a*) (*a*) to deprive the owner or any person having any special property or interest therein temporarily or absolutely of such thing or of such property or interest; or

Sec. " (*b*) (*b*) to pledge the same or deposit it as security; or

Sec. " (*c*) (*c*) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

Sec. " (*d*) (*d*) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

Sec. " -4. Sec. " **-2.** Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become moveable, with intent to steal it.

Sec. " -2. Sec. " **-3.** The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment. *Unchanged.* (29)

(28) R. v. Sherriff, 20 Cox C. C., 334.

(29) Except in the arrangement of the clauses, and by the omission of paragraphs 5 and 6 of the old section to make sec. 348 *infra*.

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Sec. " -3. Sec. " -4.	It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting. *Unchanged.* (29)	
Sec. " -5. Sec. 348.	**Agent pledging goods entrusted to him for sale; and Servant feeding horse contrary to master's orders.** No factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal. *Slightly changed in the wording.*	
Sec. " -6. Sec. " -2.	Any servant, contrary to the orders of his master, taking from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, shall not, by reason thereof be guilty of theft. *Slightly changed, in the wording.*	

Fish taken at sea are in the possession of the owner of the smack by which they are taken, as soon as they are taken, and are *consequently the subject of theft* by taking. A., — who was employed as a skipper of a smack, used for trawling outside territorial waters, — during the course of a fishing voyage, put into port, sold the fish he had taken, and appropriated the proceeds to his own use. *Held*, properly convicted of theft. (30)

The appropriation for purposes of loading and shipment, of a railway car intended by the railway company for another person who had a prior statutory right to be supplied with a car, is not a fraudulent taking or conversion of the car from such other person, if the latter had not received notice from the railway company that the car had been assigned to him. An applicant for a railway car under the Manitoba Grain Act (Can.) does not acquire a "temporary "special property or interest" in the car within section 347 of the Code, until he is informed of its assignment to him. (31)

(30) R. v. Madison, 20 Cox C. C. 294.
(31) R. v. McElroy, 11 Can. Cr. Cas., 24; 6 Terr. R., 10.

An unqualified instruction to the jury on a prosecution for theft against the finder of goods, that the pledge of same by him constitutes theft, is a misdirection entitling the accused to a new trial. Whether or not the conversion by the finder is theft depends upon the attendant circumstances, such as the class of goods, the place of finding, the interval between the finding and conversion, and the probability of being able to discover the owner. (32)

On a charge of stealing goods from a store, evidence of the finding, in prisoner's house, of the goods and of the keys fitting the store doors, and of the fact that, at the time of the alleged theft, the goods were in the store exposed for sale and had not been sold, is sufficient to put the onus upon the prisoner of accounting for his possession of the goods. (32*a*)

Where the prisoner was charged, before the County Court Judges' Criminal Court, with unlawfully stealing goods, but the charge did not allege that the offence was committed fraudulently and without color of right, it was held, affirming the decision appealed from, that the offence, of which the prisoner was accused, was sufficiently stated in the charge. (32*b*)

Sec. 306. Sec. **349. Theft of things under seizure.** *Unchanged.*

Sec. 307. Sec. **350. Theft of animals.** *Unchanged*

Sec. **351. Theft of Electricity.** — Every one commits theft who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity. *Added.*

Sec. 311. Sec. **352. Theft by owners, co-owners, partners, etc.** *Unchanged.*

Sec. 312. Sec. **353. Theft by defrauding partner in mining claim.** *Unchanged.*

Sec. 313. Sec. **354. Husband and wife.** *Unchanged.*

Sec. 308. Sec. **355. Theft by Agent.** *Unchanged.* (33)

A railway conductor who takes from a passenger, for his transportation a sum much less than the authorized fare and issues no ticket or receipt therefor, is guilty of theft as an agent, if he fraudulently omits to account for and pay, to the railway company, the money so received. Money so taken for transportation is money received by the railway conductor "on terms requiring him to account for or pay the same" to the company. (34)

A broker who receives money from a customer to purchase stocks

(32) R. v. Slavin, 35 N. B. R., 388; 7 Can. Cr. Cas., 175.

(32a) R. v. Theriault, 11 B. C. R., 117.

(32b) George v. R., 35 Can. S. C. R., 376.

(33) Except for some slightly verbal alterations, not affecting the meaning, and except that paragraph 2 is made into paragraphs 2 and 3.

(34) R. v. McLellan (No. 1), 10 Can. Cr. Cas., 1.

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on margin for a firm of correspondents, holds them in his own name, and allows them to be sold on his account, but subsequently re-arranges with his correspondents to resume business and carry the same stocks, receiving in the meantime remittances from his customer to maintain the margin, without informing him of what has taken place, and who afterwards severs anew his connection with his correspondents and receives at the same time from his customer instructions to sell the stocks, which would have resulted in a comparatively small loss, but instead of doing so, replaces them by purchase of a like quantity of the same kind from another firm whose subsequent failure causes their total loss, — is not guilty of theft by an agent under the Criminal Code. (35)

Sec. 309. Sec. **356. Theft by holder of power of attorney.** *Unchanged.*

Sec. 310. Sec. **357. Theft by misappropriating proceeds held under direction.** *Unchanged.*

PUNISHMENT OF THEFT.

Sec. 320. Sec. **358. Agents and Attorneys.** — Every one is guilty of an indictable offence and liable to fourteen years imprisonment who steals anything by any act or omission amounting to theft under the provisions of the three last preceding sections. *Changed, as here set forth.*

Sec. 319. Sec. **359. Clerks and Servants.** *Unchanged.*

Sec. 322. Sec. **360. Tenants and Lodgers.** *Unchanged.*

Sec. 323. Sec. **361. Testamentary Instruments.** *Unchanged.*

Sec. 324. Sec. **362. Documents of Title to Lands or goods.** *Unchanged.*

Sec. 325. Secc. **363. Judicial or Official Documents, etc.** *Unchanged.*

Sec. 326. Sec. **364. Post Letter Bags, etc.** *Unchanged.*

Sec. 327. Sec. **365. Other postal letters, etc.** — Every one is guilty of an indictable offence and liable to imprisonment for any term not exceeding seven years and not less than three years who steals,

(*a*) any post letter other than post letters referred to in the last preceding section;

(*b*) any parcel sent by parcel post or any article contained in any such parcel; or

(35) R. v. Bastien, 11 Can. Cr. Cas., 306; Que. Off. Rep., 15 K. B., 16.

(*c*) any key suited to any lock adopted for use by the Post Office Department, and in use on any Canada mail or mail bag. *Slightly altered, as here set forth.*

Sec. 328. Sec. **366. Stealing other mailable matter.** *Unchanged.*

A decoy letter duly stamped and placed by post office officials amongst the letters at a post office for the purpose of testing the honesty of the letter carrier whose duty it was to deal with the same, is none the less a post letter, because of its being directed to a fictitious address. (36)

Sec. 329. Sec. **367. Election Documents.** *Unchanged.*

Sec. 330. Sec. **368. Tramway, Railway or Steamboat Tickets.** *Unchanged.*

Sec. 331. Sec. **369. Cattle.** *Unchanged.*

Sec. 331*a*. **Fraudulently taking or refusing to give up cattle.** *Made into section 392, post.*

Sec. 332. Sec. **370. Dogs, birds, beasts and other domestic animals.** *Unchanged.*

Sec. 333. **Unlawfully injuring pigeons.** *Omitted here.* (37)

Sec. 334. Sec. **371. Oysters,—Theft of.** — *Meaning unchanged.*

Sec. 335. Sec. **372. Things fixed to buildings or in land.** *Unchanged.*

Sec. 336. Sec. **373. Trees, etc.** *Unchanged.*

Sec. 337. Sec. **374. Idem.** *Unchanged.*

Sec. 341. Sec. **375. Plants, etc., growing in a garden.** *Unchanged.*

Sec. 342. Sec. **376. Cultivated Plants, etc., growing elsewhere.** *Unchanged.*

Sec. 339. Sec. **377. Fences, stiles or gates.** *Unchanged.*

Sec. 343. Sec. **378. Ores or minerals from mines.** *Unchanged.*

Sec. 344. Sec. **379. Stealing from the person.** *Unchanged.*

Sec. 345. Sec. **380. Stealing in a dwelling-house.** *Unchanged.*

Sec. 346. Sec. **381. Stealing by picklocks, etc.** *Unchanged.*

Sec. 349. Sec. **382. Stealing goods from ships or wharves, etc.** *Unchanged.*

Sec. 350. Sec. **383. Stealing Wreck.** *Unchanged.*

Sec. 351. Sec. **384. Stealing on Railways.** *Unchanged.*

Sec. 352. Sec. **385. Stealing things deposited in Indian graves.** *Unchanged.*

(36) Moyer v. Vaughan, 5 Can. Cr. Cas., 392; 6 Can. Cr. Cas., 68. And see R. v. Ryan, 9 Can. Cr. Cas., 347; 9 Ont. L. R., 137.

(37) Made into sec. 393, *post.*

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Sec. 356.	Sec. **386.** **Stealing things not otherwise provided for.**	*Unchanged.*
Sec. 357.	Sec. **387.** **Additional punishment when value exceeds $200.**	*Unchanged.*
Sec. 347.	Sec. **388.** **Stealing goods in process of manufacture.**	*Unchanged.*

OFFENCES RESEMBLING THEFT.

Sec. 348.	Sec. **389.** **Fraudulently disposing of things entrusted for manufacture.**	*Unchanged.*
Sec. 363.	Sec. **390.** **Criminal breach of Trust.**	*Unchanged.*
Sec. 321.	Sec. **391.** **Public servants refusing to deliver up property lawfully demanded.**	*Unchanged.*
Sec. 331*a*.	Sec. **392.** **Fraudulently taking cattle, or fraudulently refusing to deliver up cattle, etc.** — Every one is guilty of an indictable offence and liable to three years' imprisonment who, — (*a*) without the consent of the owner thereof fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells, or fraudulently causes or procures, or assists in the taking possession, concealing, appropriating, purchasing or selling of any cattle which are found astray; or (*b*) fraudulently refuses to deliver up any such cattle to the proper owner thereof, or to the person in charge thereof on behalf of such owner or authorized by such owner to receive such cattle; or (*c*) without the consent of the owner, fraudulently wholly or partially obliterates, or alters or defaces, or causes or procures to be obliterated, altered or defaced, any brand or mark on any cattle, or makes or causes or procures to be made any false or counterfeit brand or mark on any cattle.	*Changed slightly as here set forth.*
Sec. 333.	Sec. **393.** **Pigeons, — Unlawfully killing or injuring.**	*Unchanged.*
Sec. 338.	Sec. **394.** **Drift Timber.**	*Unchanged.*
Sec. 340.	Sec. **395.** **Possessing trees, etc., without being able to satisfactorily account for same.**	*Unchanged.*

Sec. 353. Sec. **396. Destroying documents of title.** *Unchanged.*
Sec. 354. Sec. **397. Concealing anything capable of being stolen.** *Unchanged.*
Sec. 355. Sec. **398. Bringing stolen property into Canada.** *Unchanged.*

RECEIVING STOLEN GOODS.

Sec. 314. Sec. **399. Receiving property obtained by any indictable offence.** *Unchanged.*
Sec. 315. Sec. **400. Receiving stolen property..** *Unchanged.*
Sec. 316. Sec. **401. Receiving property obtained by offence punishable summarily.** *Unchanged.*
Sec. 317. Sec. **402. When receiving is complete.** *Unchanged.*
Sec. 318. Sec. **403. Receiving after restoration to owner.** *Unchanged.*

FALSE PRETENCES.

Sec. 358. Sec. **404. Definition.** *Unchanged.*

The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof, and is not, in itself, a false representation of a fact past or present. (38)

False representations amounting to mere promises or professions of intention, though they induce the defrauded part to part with the possession of his goods, are not false pretences under this section, as they are not representations of a matter of fact either present or past: and where a person is induced, by a false representation, to part with the possession of goods but does not part with his right of property therein (*ex. gr.* in a contract of hire of a chattel), there can be no conviction for obtaining the goods under false pretences. (39)

Sec. 359. Sec. **405. Punishment for obtaining by false pretence.** *Unchanged.*
Sec. 360. Sec. **406. Obtaining execution of valuable security by false pretence.** *Unchanged.*
Sec. 361. Sec. **407. Falsely pretending to enclose money, etc., in letter.** *Unchanged.*

PERSONATION.

Sec. 456. Sec. **408. Personation with intent to obtain property.** *Unchanged.*

(38) R. v. Richard, 11 Can. Cr. Cas., 279.
(39) R. v. Nowe, 8 Can. Cr. Cas., 441: 36 N. S. R., 531.

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Sec. 457.	Sec. **409. Personation at examinations.**	*Unchanged.*
Sec. 458.	Sec. **410. Personation of owners of stock, etc.**	*Unchanged.*
Sec. 459.	Sec. **411. Acknowledging any instrument in a false name.**	*Unchanged.*

THE DOMINION ELECTIONS ACT.

The *Dominion Elections Act*, 1900, — (63-64 Vic., c. 12), — certain sections of which are set out at pages 519-524 of the Author's second Edition of the Criminal Code, — is repealed, and the *Dominion Elections Act*, now in force, is chapter 6 of the *Revised Statutes*, 1906, the principal provisions of which, with reference to the forgery, etc., of ballot papers, and with reference to personation and other offences at elections, are the following:—

Forgery of ballot papers and ballot box frauds, etc. Sec. 255 enacts that "Every one who —

(*a*) forges, counterfeits, fraudulently alters, defaces or fraudulently destroys a ballot paper, or the initials of the deputy returning officer signed thereto, or —

(*b*) without authority supplies a ballot paper to any person, or—

(*c*) fraudulently puts into a ballot box a paper other than the ballot paper which he is authorized by law to put in, or —

(*d*) fraudulently takes a ballot paper out of the polling station, or —

(*e*) without due authority destroys, takes, opens, or otherwise interferes with a ballot box or book or packet of ballot papers then in use for the purpose of the election, or —

(*a*) forges, counterfeits, fraudulently alters, defaces or fraud-stamping of ballots papers, or uses any such stamp for any purpose other than the stamping of ballot papers, or not being a returning officer, has in his possession any such stamp or any counterfeit or imitation thereof, or —

(*g*) being a deputy returning officer, fraudulently puts, otherwise than as authorized by this Act, his initials on the back of any paper purporting to be or capable of being used as a ballot paper at an election, or —

(*h*) with fraudulent intent, prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election, or —

(*i*) being authorized by the returning officer to print the ballot papers for an election, with fraudulent intent prints more ballot papers than he is authorized to print, or —

(*j*) attempts to commit any offence specified in this section, —

is guilty of an indictable offence, and shall be liable, if he

is a returning officer, deputy returning officer or other officer engaged in the election, to a fine not exceeding one thousand dollars and not less than three hundred dollars, or to imprisonment for a term not exceeding five years and not less than one year, with or without hard labor, in default of paying such fine, — and, if he is any other person, to a fine not less than one hundred dollars and not exceeding five hundred dollars, or to imprisonment for any term not exceeding two years and not less than six months, with or without hard labor, in default of paying fine."

Secrecy of Voting. Section 258 contains special provisions for ensuring the secrecy of voting and for the punishment of any interference therewith.

No flags nor party badges to be used at elections. Section 260 makes it an offence (punishable, on indictment or summarily by fine not exceeding $100 or imprisonment not exceeding three months, or both, in the discretion of the Court), for any person to furnish any party flag, etc., or any ribbon or badge, with intent that the same shall be carried, or worn or used, on or for eight days prior to an election day, for distinguishing the bearers or wearers thereof as supporters of any candidate, or for any person, during such period, to carry, or wear or use any such party flag, etc., or any such ribbon or badge.

Bribery. — Bribery is defined by section 265, and is thereby made indictable and punishable by imprisonment for a term not exceeding six months; and a person guilty thereof is, moreover, rendered liable to forfeit $200 and costs to any one who sues therefor. See sections 266, *et seq.*, as to other corrupt practices, etc., at elections.

Personation at Elections. Section 272 enacts that "Every person is guilty of personation and liable to a penalty not exceeding two hundred dollars and not less than fifty dollars, and to imprisonment for a term not exceeding two years and not less than three months, who, at an election, —

(*a*) applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead, or of a fictitious person; or —

(*b*) having voted once at any such election, applies, at the same election, for a ballot paper in his own name." And, by section 273, it is enacted that "Every person who aids, abets, counsels or procures the commission by any person of the offence of personation shall be liable to a penalty not exceeding two hundred dollars and not less than one hundred dollars, and to imprisonment for a term of two years and not less than three months."

See, also, sections 274 and 275 of the Act as to other offences of the same nature.

By expressly enacting that every person, who, at an election, *applies* for a ballot paper in the name of some other person, is guilty of personation, section 272 of our *Dominion Elections Act* follows the view taken by Judge Blackburn in the English case of R. v. Hague, cited at p. 523 of the Author's second edition of the Criminal Code. (40)

Procedure. By section 284 of the Act, it is provided that, (except in cases of indictable offences and offences made punishable on summary conviction), all penalties and forfeitures imposed by the Act shall be recoverable or enforceable with full costs of suit by any person who sues therefor by action of debt or information, in any Court of competent jurisdiction in the province in which the cause of action arises, and that, in default of payment of the amount which the offender is condemned to pay within the period fixed by the Court, the offender shall be imprisoned for any term less than two years, unless such penalty and costs are sooner paid; but, by section 285, it is provided that no action or information for the recovery of any such penalty or forfeiture shall be commenced unless the person suing therefor has given security to the amount of $50 for the defendants costs of defence.

Section 301 of the Act provides that the provisions of Part XVI of the Criminal Code shall apply to all proceedings under the Act against any person or persons accused of personation.

By section 306 of the Act, it is enacted that no indictment for corrupt practices shall be tried before any Court of Quarter Sessions or General Sessions; and section 583 (*j*), *post*, of the new Criminal Code provides that no Court of general or quarter sessions has power to try any indictment for bribery or undue influence, personation or other corrupt practice under the *Dominion Elections Act*.

Section 307 of the *Dominion Elections Act* provides that every prosecution for an indictable offence under the Act, and every action, suit or proceeding for any pecuniary penalty given by the Act to the person suing therefor shall be commenced within one year next after the act committed and not afterwards (unless the prosecution is prevented by the withdrawal or absconding of the defendant out of the jurisdiction of the Court), and, when commenced, shall be proceeded with and carried on without wilful delay.

(40) R. v. Hague, 9 Cox C. C., 412.

CRIMINAL CODE (resumed).

FRAUD AND FRAUDULENT DEALING WITH PROPERTY.

Sec. 362. Sec. **412. Obtaining passage by false ticket.** *Unchanged.*

Sec. 364. Sec. **413. Official destroying or falsifying book or valuable security.** *Unchanged.*

Sec. 365. Sec. **414. False prospectus statement, etc., by promoters, directors, etc.** *Unchanged.*

Sec. 366. Sec. **415. Officer or clerk destroying or falsifying book or valuable security, or making or concurring in making any false entry in any book, etc.** *Unchanged, in meaning.*

In an English case taken under the *Imperial Falsification of Accounts Act*, 1875, section 1, the accused was employed in Paris to receive money on account of his employers in London. It was his duty to pay money so received into a bank, to enter on slips an account of all such sums, and to send those slips to London. A cash account book was kept in London into which those slips were entered by one of the prisoner's employees. The accused received various sums of money which he kept, and intentionally omitted from the slips sent to London, knowing that entries omitted on the slips would likewise be omitted from the cash account book kept in London as, in fact, they were. *Held*, (Kennedy J. and Channell J. doubting), that the accused was properly convicted, of omitting and concurring in omitting the entries in the cash account book in London, and that, as the offence was completed in London, where the slips were received, the English Court in London had jurisdiction to try the case. (41)

Sec. 367. Sec. **416. False statement or return by public officer.** *Unchanged.*

THE BANK ACT.

The provisions of the new *Bank Act*, (R. S., 1906, c. 29), relating to returns and statements to be made by Banks, are sections 112, 113, 114, 147, 148, 149, 150, 151, 153, 154, 155, 156 and 157; which sections are to the following effect:—

Monthly Returns and Penalty for not making same. "Monthly Returns shall be made by the bank to the Minister, (42), in the form set forth in schedule D of this Act.

(41) R. v. Oliphant, 74 L. J., K. B., 591; [1905] 2 K. B., 67.

(42) "Minister" means, according to the *Interpretation* section of the *Bank Act*, the Minister of Finance and Receiver General. (See sec. 2, of the *Bank Act*).

2. Such returns shall be made up and sent in within the first fifteen days of each month, and shall exhibit the condition of the bank on the last juridical day of the month last preceding.

3. Such returns shall be signed by the chief accountant and by the president or vice-president, or the director then acting as president, and by the manager, cashier or other principal officer of the bank at its chief place of business." (Sec. 112 of the *Bank Act*).

And by section 147 of the Act it is provided that every Bank which neglects to make up and send to the Minister, within the first fifteen days of any month any such monthly return shall incur a penalty of fifty dollars for each and every day after the expiration of such time, during which the bank neglects to make and send in such return.

Special Returns and Penalty for not making same. "The Minister may also call for special returns from any bank, whenever, in his judgment, they are necessary to afford a full and complete knowledge of its condition.

2. Such special returns shall be made and signed in the manner and by the persons specified in the last preceding section.

3. Such special returns shall be made and sent in within thirty days from the date of the demand therefor by the Minister: Provided that the Minister may extend the time for sending such special returns for such further period, not exceeding thirty days, as he thinks expedient." (Sec. 112 of the Bank Act). And, by sec. 148 of the Act, it is provided that every Bank which neglects to make and send in any such special return within thirty days from the date of the demand therefor by the Minister, or, if such time is extended by the Minister, within such extended time, not exceeding thirty days as the Minister may allow, shall incur a penalty of five hundred dollars for each and every day such neglect continues.

Annual Returns. — Section 114 requires the Bank, within twenty days after the close of each year, to transmit or deliver to the Minister returns of all dividends remaining unpaid for more than five years, of all drafts or bills of exchange issued by the bank to any person and remaining unpaid for more than five years, and of the names and addresses of its shareholders and the number and value of their respective shares. And by sections 149, 150 and 151 of the Act, it is provided that every bank, which neglects to transmit or deliver to the Minister, within the time aforesaid, any of such annual returns, shall incur a penalty of fifty dollars for each and every day during which such neglect continues.

OTHER OFFENCES AGAINST THE BANK ACT.

Making a false statement in any return, etc. — Sec. 153 enacts that, "The making of any false or deceptive statement in any ac-

count, statement, return, report or other document respecting the affairs of the bank is an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding five years"; and that "every president, vice-president, director, auditor, manager, cashier or other officer of the bank, who (*a*) prepares, signs, approves or concurs in any such account, statement, return, report or document containing such false or deceptive statement, or (*b*) uses the same with intent to deceive or mislead any person, shall be held to have wilfully made such false or deceptive statement and shall further be responsible for all damages sustained by any person in consequence thereof."

Director refusing to make calls in case of suspension. — It is enacted by sec. 154 that, — (*a*) If any suspension of payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank continues for three months after the expiration of the time which under the provisions of the Act, would constitute the Bank insolvent; and (*b*) if no proceedings are taken under any Act for the winding up of the bank; and (*c*) if any director of the bank refuses to make or enforce or to concur in the making or enforcing of any call on the shareholders of the bank, to any amount which the directors deem necessary to pay all the debts and liabilities of the bank; such director shall be guilty of an indictable offence, and liable, — (*a*) to imprisonment for any term not exceeding two years; and (*b*) personally for any damages suffered by any such default.

Officers giving undue preference to any creditor. "Every person who, being the president, vice-president, director, manager, cashier or other officer of the bank, wilfully gives or concurs in giving to any creditor of the bank any fraudulent, undue or unfair preference over other creditors, by giving security to such creditor or by changing the nature of his claim, or otherwise howsoever, is guilty of an indictable offence, and liable, — (*a*) to imprisonment for a term not exceeding two years, and (*b*) for all damages sustained by any person in consequence of such preference." (Sec. 155 of the *Bank Act*).

Unauthorized use of title of "bank," etc. "Every person assuming or using the title of 'Bank,' 'banking company,' 'banking house,' 'banking association,' or 'banking institution,' without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act." (Sec. 156 of the *Bank Act*).

Punishment of Offences against the Bank Act. "Every person committing an offence declared to be an offence against this Act,

shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the Court before which the conviction is had." (Sec. 157 of the *Bank Act*).

CRIMINAL CODE (resumed)

Sec. 368. Sec. **417. Defrauding Creditors by disposing of property, or failing to keep books of account.** Every one is guilty of an indictable offence and liable to a fine of Eight hundred dollars and to one year's imprisonment who, —

Sec. " (*a*) (*a*) with intent to defraud his creditors, or any of them,

(i) makes or causes to be made any gift, conveyance, assignment, sale transfer or delivery of his property, or

(ii) removes, conceals or disposes of any of his property; or

Sec. " (*b*) (*b*) with the intent that any one shall so defraud his creditors, or any one of them, receives any such property; or *Unchanged.*

(*c*) being a trader and indebted to an amount exceeding $1,000, is unable to pay his creditors in full and has not, for five years next before such inability kept such books of account as according to the usual course of any trade or business in which he may have been engaged, are necessary to exhibit or explain his transactions, unless he be able to account for his losses to the satisfaction of the court or judge and to shew that the absence of such books was not intended to defraud his creditors. *Added.*

A finding that, an insolvent has secreted a part of his property with intent to defraud his creditors, is not supported by evidence merely of a discrepancy between two financial statements made by him a few months apart, and the failure of the insolvent to account for the deficit in his affairs other than as being the result of an expenditure of capital in living expenses. (42*a*)

(42*a*) Bryce v. Wilkes, 5 Can. Cr. Cas. 445.

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Sec. 369. Sec. 418. **Destroying or falsifying books to defraud creditors.** *Unchanged.*

Sec. 370. Sec. 419. **Vendor concealing deeds or encumbrances or falsifying pedigrees.** *Unchanged.*

Sec. 371. Sec. 420. **Fraudulent registration of titles.** *Unchanged.*

Sec. 372. Sec. 421. **Fraudulent sales of real property.** *Unchanged.*

Sec. 373. Sec. 422. **Fraudulent hypothecation of real property.** *Unchanged.*

Sec. 374. Sec. 423. **Fraudulent seizures, under execution, of land.** *Unchanged.*

Sec. 375. Sec. 424. **Unlawful dealings with gold or silver.** *Unchanged.*

Sec. 376. Sec. 425. **Giving or using false warehouse receipts.** *Unchanged.*

Sec. 377. Sec. 426. **Fraudulent disposal of merchandise on which advances have been made or security given by consignees.** *Unchanged.*

Sec. 378. Sec. 427. **Fraudulent receipts under Bank Act; or fraudulently alienating property covered by receipt.** *Unchanged.*

Sec. 379. Sec. 428. **Innocent Partners.** *Meaning Unchanged.*

Sec. 380. Sec. 429. **Selling vessel or wreck.** *Unchanged.*

Sec. 381. Sec. 430. **Offences respecting Wrecks.** Every one who,

(*a*) secretes any wreck, or defaces or obliterates the marks thereon, or uses means to disguise the fact that it is wreck, or in any manner conceals the character thereof, or the fact that the same is wreck, from any person entitled to inquire into the same; or,

(*b*) receives any wreck, knowing the same to be wreck, from any person other than the owner thereof or the receiver of wrecks, and does not within forty-eight hours inform the receiver thereof; or,

(*c*) offers for sale or otherwise deals with any wreck, knowing it to be wreck, not having a lawful title to sell or deal with the same; or,

(*d*) keeps in his possession any wreck, knowing it to be wreck, without a lawful title so to keep the same, for any time longer than the time reasonably necessary for the delivery of the same to the receiver; or,

(*e*) boards any vessel which is wrecked, stranded or in distress against the will of the master, unless the person so boarding is, or acts by command of the receiver;

is guilty of an offence punishable on indictment with two years' imprisonment, and on summary conviction before two justices with a penalty of four hundred dollars or six months' imprisonment with or without hard labour.

Sec. 382. Sec. **431. Offences respecting old marine stores.** *Unchanged.*

Sec. 383. **Definitions with regard to public stores.** (43)

Sec. 384. Sec. **432. Marks to be used on public stores.** The marks specified in this section in that behalf may be applied in or on any public stores to denote His Majesty's property in such stores,

Marks appropriated for His Majesty's use in or on Naval, Military, Ordnance, Barrack, Hospital and Victualling Stores.

STORES.	MARKS.
Hempen cordage and wire rope.	White, black or coloured threads laid up with the yarns and the wire respectively.
Canvas, fearnought, hammocks and seamen's bags.	A blue line in a serpentine form.
Bunting.	A double tape in the warp.
Candles.	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber, metal and other stores not before enumerated.	The broad arrow, with or without the letters W. D.

(43) Transferred to subsections 27, 28 and 34 of section 2, *ante*.

Marks appropriated for use on stores, the property of His Majesty in the right of his Government of Canada.

STORES.	MARKS.
Public stores.	The name of any public department, or the word "Canada," either alone or in combination with a Crown or the Royal Arms.
Militia Stores.	The broad arrow, within the letter C.

2. It shall be lawful for any public department and the contractors officers and workmen of such department to apply such marks, or any of them in or on any such stores.

Slightly altered in the wording; and amended, and added to, — as to "Militia Stores,"— by 6-7 Edw. VII., c.

Sec. 385. Sec. **433. Unlawfully applying marks to public stores.**

Unchanged.

Sec. 386. Sec. **434. Obliterating marks from public stores.**

Unchanged.

Sec. 387. Sec. **435. Unlawful possession, sale, etc., of public stores.** — Every one who without lawful authority, the proof of which lies on him, receives, possesses, keeps, sells or delivers any public stores bearing any such mark as aforesaid, knowing them to bear such mark, is guilty of an offence punishable on indictment or on summary conviction, and liable, on conviction on indictment, to one year's imprisonment, and, if the value thereof does not exceed twenty-five dollars, on summary conviction before two justices, to a fine of one hundred dollars or to six months' imprisonment with or without hard labour.

Slightly altered, as here set forth.

Sec. 388. Sec. **436. Being in possession of public stores without being able to justify.**

Meaning unchanged.

Sec. 389. Sec. **437. Searching for stores near his Majesty's vessels, wharfs or docks.** *Unchanged.*

Sec. 390. Sec. **438. Receiving regimental necessaries, etc., from soldiers, militiamen or deserters.** — Every one who

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(*a*) buys, exchanges, or detains, or otherwise receives from any soldier, militiaman or deserter any arms, clothing or furniture belonging to His Majesty, or any such articles belonging to any soldier, militiaman or deserter as are generally deemed regimental necessaries according to the custom of the army; or,

(*b*) causes the colour of such clothing or articles to be changed; or,

(*c*) exchanges, buys or receives from any soldier or militiaman, any provisions, without leave in writing from the officer commanding the regiment or detachment to which such soldier belongs;

is guilty of an offence punishable on indictment or on summary conviction, and liable on conviction on indictment to five years' imprisonment, and on summary conviction before two justices to a penalty not exceeding forty dollars, and not less than twenty dollars and costs, and, in default of payment, to six months' imprisonment with or without hard labour.

Altered, as here set forth.

Sec. 391. Sec. **439. Receiving necessaries from seamen or marines.**—Every one who buys, exchanges, or detains, or otherwise receives from any seaman or marine, upon any account whatsoever, or has in his possession any arms or clothing, or any articles, belonging to any seaman, marine or deserter, as are generally deemed necessaries according to the custom of the navy, is guilty of an offence punishable on indictment or on summary conviction, and liable on conviction on indictment to five years' imprisonment and on summary conviction before two justices to a penalty not exceeding one hundred and twenty dollars, and not less than twenty dollars and costs, and in default of payment to six months' imprisonment.

Slightly altered as here set forth.

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Sec. 392. Sec. **440. Receiving seaman's property. unless in ignorance, or on sale by authority.**—Every one who detains, buys, exchanges, takes on pawn or receives, from any seaman or any person acting for a seaman, any seaman's property, or solicits or entices any seaman, or is employed by any seaman to sell, exchange or pawn any seaman's property, unless he acts in ignorance of the same being a seaman's property, or of the person with whom he deals being or acting for a seaman, or unless the same is sold by the order of the Admiralty or commander in chief, is guilty of an offence punishable on indictment or on summary conviction and liable on conviction on indictment to five years' imprisonment, and on summary conviction for a first offence to a penalty not exceeding one hundred dollars; and on summary conviction for a second offence, to the same penalty, or in the discretion of the justice, six months' imprisonment, with or without hard labour. *Slightly altered.* (44)

Sec. 393. Sec. **441. Not justifying possession of seaman's property.** *Unchanged.*

Sec. 395. Sec. **442. Cheating at play.** *Unchanged.*

Sec. 396. Sec. **443. Pretending to use witchcraft.** *Unchanged.*

Deception is an essential element of the offence of "undertaking to tell fortunes", under this section, and it has been held by the Court of Appeal for Ontario, that to uphold a conviction for that offence there must be evidence upon which it may be reasonably found that the accused was asserting or representing that he had the power to tell fortunes, with intent that his assertion or representation should be believed and with intent to delude and defraud others. (45)

So, that where the prediction of the future was expressly stipulated only to be a delineation made pursuant to rules laid down in published works on palmistry, etc., an acquittal was directed as the express contract negatived any intention to deceive. (46)

Sec. 394. Sec. **444. Conspiracy to defraud.** *Unchanged.*

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(44) Paragraphs 3, 4 and 5, here omitted, of the old section 392, are made into clauses (*q*), (*r*) and (*b*) of sec. 335, *ante*.

(45) R. v. Marcott, 4 Can. Cr. Cas., 437.

(46) R. v. Chilcott, 6 Can. Cr. Cas., 27.

It is a conspiracy to defraud a railway company for an employee of the audit office of the railway to agree with train conductors to sell to them secret information as to the time of special audits of passenger tickets on their trains, which information it was the duty of the accused, as such employee, to keep secret. (47)

Upon a charge of conspiracy to defraud the Canadian Pacific Railway Co. by bribing clerks in the company's employ to illegally and fraudulently disclose information of the secret audits to be made on trains and to furnish such information to conductors to enable them to be prepared for audits when made and to be free at other times to retain fares and to allow passengers to ride free or for a reduced fare, the Court properly rejected evidence of conductors to the effect that if they knew the date of a proposed secret audit, they would communicate it to the conductor, whose train was to be audited, for a purpose other than that of defrauding the company. (48)

It is not error for the trial judge to permit proof of acts of the alleged conspirators to be given in evidence before the agreement to conspire had been established if the latter is in fact proved during the course of the trial. (49)

The defendants were indicted for unlawfully conspiring and agreeing together to deprive one W. G. of the necessaries of life, to wit, proper medical care and nursing, whereby his death was caused. *Held* that this count did not charge the defendants with a conspiracy to commit any indictable offence known to the law and was properly quashed. A second count charged the defendants with having unlawfully conspired and agreed together to effect the cure of W. G. of a sickness endangering life, by unlawful and improper means, thereby causing his death. *Held* that this count was equally bad and was properly quashed. (50)

An information laid in general terms charging that the accused did in specified years "conspire with others whose names are unknown by deceit, falsehood and other fraudulent means to defraud the public", sufficiently states an offence under section 394 (now section 444) of the Code to give jurisdiction to a magistrate to hold a preliminary enquiry. (51)

A combination by two or more persons to obtain by false representations from the Foreign Office in England a passport in the

(47) R. v. Johnston, 6 Can. Cr. Cas., 232.

(48) R. v. Carlin, 6 Can. Cr. Cas., 305; confirmed in appeal, 6 Can. Cr. Cas., 507; Que. Off. Rep., 12 K. B., 368; Que. Off. Rep., 12 K. B., 483.

(49) R. v. Hutchinson, 8 Can. Cr. Cas., 486; 11 B. C. R., 24.

(50) R. v. Goodfellow, 11 Ont. L. R., 359.

(51) R. v. Phillips, 11 Can. Cr. Cas., 89.

name of one person with intent that it should be used by another person is an act tending to bring about a public mischief and is therefore an indictable offence at the common law. (51*a*)

ROBBERY AND EXTORTION.

Sec. 397. Sec. **445. Robbery defined.** *Unchanged.*
Sec. 398. Sec. **446. Robbery with violence. Punishment.** *Unchanged.*
Sec. 399. Sec. **447. Robbery. Punishment.** *Unchanged.*
Sec. 400. Sec. **448. Assault with intent to rob.** *Unchanged.*
Sec. 401. Sec. **449. Stopping the mail with intent to rob.** *Unchanged.*
Sec. 402. Sec. **450. Fraudulently compelling execution of document.** *Unchanged.*
Sec. 403. Sec. **451. Letters demanding property, with menaces.** *Unchanged.*
Sec. 404. Sec. **452. Demanding with intent to steal.** *Unchanged.*
Sec. 405. Sec. **453. Extortion by threats to accuse of a capital or infamous crime.** *Unchanged in meaning.*

Where, on the trial of a charge of having, with intent to extort money, accused or threatened to accuse a physician of having procured an abortion on the prisoner's wife, — the evidence for the prosecution being that the demand for money was on a claim of seduction as well as abortion, and the defence claiming that the demand was in respect of seduction only, it was held that evidence on the part of the defence to prove the charge of seduction was not admissible. (52)

Sec. 388. Sec. **454. Extortion by threats to accuse of any other offence.** *Meaning unchanged.*

It is an offence under this section for any person, with intent to extort or gain, to *cause* another person to be served with a justice's summons charging the latter with a criminal offence, notwithstanding that the information was laid by a third person who had no such intention to extort. (53)

BURGLARY AND HOUSE-BREAKING.

Sec. 407. **Meaning of Terms.**
Sec. " (*a*) **"Dwelling-house."** (54)
Sec. " (*i*) **"Outbuilding."** (55)

(51*a*) R. v. Bradsford, [1905] 2 K. B., 730; 75 L. J., K. B., 64.
(52) R. v. Wilson, 6 Can. Cr. Cas., 131.
(53) R. v. Cornell, 8 Can. Cr. Cas., 416.
(54) Transferred to sec. 335 (*c*), *ante*.
(55) Made into sec. 339. (See *ante*).

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Sec. " (*b*)	" **Break.**" (56)	
Sec. " (*i*)	" **Entrance into a building.**" (57)	
Sec. " (*ii*)	" **Entrance by artifice,**" etc. (57)	
Sec. 408.	Sec. **455. Breaking place of worship and committing indictable offence therein.**	*Unchanged.*
Sec. 409.	Sec. **456. Breaking place of public worship with intent to commit indictable offence.**	*Unchanged.*
Sec. 410.	Sec. **457. Burglary.**	*Unchanged.*
Sec. 411.	Sec. **458. House-breaking.**	*Unchanged.*

To effect an entrance to a dwelling-house by further lifting a partly open window is not a "breaking."

Where an indictment for burglary charges only the breaking and entering with intent, — and does not charge a breaking out, — and the evidence shews that two windows had been disturbed sufficiently to allow of an entrance, one of them being previously closed and the other partly open, but it does not appear by which of them the entrance was made, it is error to instruct the jury that an entrance by either is sufficient, and the misdirection is a substantial wrong to the accused entitling him to a new trial. (58)

Sec. 412.	Sec. **459. House-breaking with intent.**	*Unchanged.*
Sec. 413.	Sec. **460. Shop-breaking.**	*Unchanged.*
Sec. 414.	Sec. **461. Shop-breaking with intent.**	*Unchanged.*
Sec. 415.	Sec. **462. Entering or being found in a dwelling-house at night with intent.**	*Unchanged.*

On an indictment for being unlawfully in a dwelling-house by night with intent to assault, a written verdict of "guilty of being in the house unlawfully, also guilty of assault," is a good verdict of guilty on the charge, as the assault necessarily includes the intent. (59)

To complete the offence of being unlawfully in a dwelling-house with intent to assault, it is sufficient that the intent originated after the entry, and that the assault was threatened by the accused in his efforts to escape from the house after being discovered therein. (60)

Sec. 416.	Sec. **463. Being found armed with intent to break a dwelling-house.**	*Unchanged.*
Sec. 417.	Sec. **464. Having burglars' tools, or being disguised, etc.**	*Unchanged.*
Sec. 418.	Sec. **465. Punishment after previous conviction.**	*Unchanged.*

(56) Transferred to sec. 335 (*c*). *ante.*
(57) Transferred to sec. 340. *ante.*
(58) R. v. Burns, 7 Can. Cr. Cas., 95; 36 N. S. R., 257.
(59) R. v. Higgins, 10 Can. Cr. Cas., 456; 38 N. S. R., 328.
(60) *Ib.*

FORGERY AND PREPARATION THEREFOR.

Sec. 419. **Meaning of "Document."** (61)
Sec. 420. " " **"Bank Note."** (62)
Sec. " " " **"Exchequer bill."** (63)
Sec. 421. " " **"False document."** (64)
Sec. 422. Sec. **466. Forgery defined.** *Unchanged.*
Sec. 424. Sec. **467. Uttering forged documents.** *Unchanged.*

The uttering of a false letter of introduction, the signature to which is forged is an indictable offence, if the person uttering same knows it to be a false document and to have been made with intent that it should be acted upon as genuine to the prejudice of any one. (65)

Unless the forged instrument has been lost or destroyed, it must be produced to establish a *prima facie* case of forgery. (66)

Sec. 423. (A) Sec. **468. Punishment for forgery.** — Every one who commits forgery of —
(*a*)to(*y*) (*a*)to(*y*) any document, etc. is guilty of an indictable offence, and liable to **imprisonment for life,** if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as genuine.
Meaning unchanged.

Sec. 423. (B) Sec. **469. Punishment for forgery.** — Every one who commits forgery of —
(*a*),(*b*), (*a*),(*b*), any entry, etc.
is guilty of an indictable offence and liable to **fourteen years' imprisonment,** if the document forged purports to be or was intended by the offender to be understood to be, or to be used as genuine.
Meaning unchanged.

Sec. 423. (C) Sec. **470. Punishment of forgery.** — Every one who commits forgery of —
(*a*),to(*n*), (*a*)to(*n*), any record of any court of justice, etc. is guilty of an indictable offence and liable to **seven years' imprisonment,** if the document forged purports to be, or was intended by the offender to be understood to be, or to be used as genuine. *Meaning unchanged.*

Sec. 434. Sec. **471. Instruments of forgery.** *Unchanged.*

(61) Transferred to sec. 335 (*f*), *ante.*
(62) Transferred to sec. 2, subsection (4), *ante.*
(63) Transferred to sec. 335 (*h*), *ante.*
(64) Transferred to sec. 335 (*j*), *ante.*
(65) Re Abeel, 8 Can. Cr. Cas., 189.
(66) Re Harsha, (No. 1), 10 Can. Cr. Cas., 433; 10 Ont. L. R., 457.

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OFFENCES RESEMBLING FORGERY.

Sec. 425.	Sec. **472.**	**Counterfeiting government seals..**	*Unchanged in meaning.*
Sec. 426.	Sec. **473.**	**Counterfeiting seals of courts or registry offices or burial boards.**	*Unchanged in meaning.*
Sec. 427.	Sec. **474.**	**Unlawfully printing or tendering in evidence any counterfeit proclamation.**	*Unchanged.*
Sec. 428.	Sec. **475.**	**Sending telegrams in false names.**	*Unchanged.*
Sec. 429.	Sec. **476.**	**Sending false telegrams or letters.**	*Unchanged.*
Sec. 430.		**Possessing forged bank notes.**	*Omitted here.* (67)
Sec. 431.	Sec. **477.**	**Drawing document without authority.**	*Unchanged.*
Sec. 432.	Sec. **478.**	**Obtaining anything by forged instrument or by probate of forged will.**	*Meaning unchanged.*
Sec. 433.		**Interpretation of terms.** (*a*) **Exchequer bill paper.** (68)	
Sec. "		**Interpretation of terms.** (*b*) **Revenue paper.** (69)	
Sec. 435.	Sec. **479.**	**Counterfeiting Stamps, etc.**	*Unchanged.*
Sec. 436.	Sec. **480.**	**Injuring register of births and deaths.**	*Unchanged.*
Sec. 437.	Sec. **481.**	**Falsfying extracts from registers.**	*Unchanged.*
Sec. 438.	Sec. **482.**	**Making false certificates of entries, and uttering false certificates.**	*Unchanged.*
Sec. 439.	Sec. **483.**	**Knowingly certifying false copy by official, and forgery of certificates.**	*Unchanged.*
Sec. 440.	Sec. **484.**	**False entry in Government account books.**	*Unchanged.*
Sec. 441.	Sec. **485.**	**False dividend warrants.**	*Unchanged.*
Sec. 442.		**Printing circulars, etc., in likeness of notes.**	*Omitted here.* (70)

(67) Transferred to sec. 550, *post.*
(68) Transferred to sec. 335 (*i*), *ante.*
(69) Transferred to sec. 335 (*p*), *ante.*
(70) Transferred to sec. 551, *post.*

Sec. 443.	Definitions of	(*a*)	"Trade mark." (71)
Sec. "	"	(*b*)	"Trade description." (71*a*)
Sec. "	"	(*c*)	"False trade description." (71*b*)
Sec. "	"	(*d*)	"Goods." (71*c*)
Sec. "	"	(*e*)	"Covering." (71*d*)
Sec. "	"	(*f*)	"Person, manufacturer, dealer, or trader," and "proprietor." (71*e*)
Sec. "	"	(*g*)	"Name." (71*f*)
Sec. "	"	2.	"False name or initials." (71*g*)

FORGERY OF TRADE MARKS and FRAUDULENT MARKING OF MERCHANDISE.

Sec. 445. Sec. **486. Forgery of Trade Marks defined.** *Unchanged.*
Sec. 446. Sec. **487. Applying trade-marks or trade descriptions to goods.** *Unchanged.*

Appellant asked at respondent's shop for two half pounds of tea, and was supplied with two packets, on the outside of each of which was stamped, in ink, a notice that the weight, including the wrapper, was more than half a pound. The Court upheld the refusal of the magistrates to convict, and held that there had been no false trade description within the meaning of the Act. (72)

An article was sold in packets as "S's patent refined isinglass," preceded by the words "By Her Majesty's Royal Letters Patent" and the Royal coat of arms. On analysis, the contents of the packets were found to be gelatine. An information for unlawfully applying to gelatine a false description, and thereby stating it to be isinglass, also with representing it to be the subject of an existing patent, was rightly dismissed on the ground that isinglass was often used for gelatinous matters, and that the words "patent refined isinglass" was not an untrue description. (73)

(71) Transferred to sec. 335, (*s*), *ante*.
(71*a*) Transferred to sec. 335 (*t*), *ante*.
(71*b*) Transferred to sec. 335 (*l*), *ante*.
(71*c*) Transferred to sec. 335 (*m*), *ante*.
(71*d*) Transferred to sec. 335 (*d*), *ante*.
(71*e*) Transferred to sec. 335 (*o*), *ante*.
(71*f*) Transferred to sec. 335 (*n*), *ante*.
(71*g*) Transferred to sec. 335 (*k*), *ante*.
(72) Langley v. Bombay Tea Co., 19 Cox C. C., 551.
(73) Gridley v. Swinborne, 52 J. P., 791.

The foundation of a margarine mixture made in France and imported as "Oleo Margarine," was mixed, in Southampton, with a small percentage of Danish butter and English milk. The finished product was called "Le Dansk," and was sold in England in card boxes under the description "Le Dansk French Factory, Le Dansk, Paris." The conviction was affirmed on the grounds that the words were a false description, and the article was obviously represented as a foreign make when it was not. (74)

At his establishment in Ireland, Lipton sold, under the descriptions, — (1) "Lipton's prime mild cured," and, (2) "First quality smoked ham, own cure at Lipton's market," hams which had been manufactured and cured by him in America. The Court of Queen's Bench (Ireland), held that neither of the descriptions was a false trade description. (75)

At Christies, there was sold a piece of china marked, in the catalogue, "Dresden," but on the lot being reached, the auctioneer said, to the assembled, buyers, "Our attention has been drawn to this lot, and we sell it for what it is worth," and put his pen through the word "Dresden." No attempt was made to shew that the article was Dresden China. The Queens Bench Division set aside the conviction of the auctioneers, and held that the defendant might show in his defence that he acted innocently, although at the time of the sale he had reason to suspect the genuineness of the trade description and so be exonerated. (76)

Sec. 447. Sec. **488. Forgery of a trade mark, or false application of a trade mark, etc., an indictable offence.** *Unchanged.*

2. On any prosecution for forging a trade mark, the burden of proof of the assent of the proprietor shall lie on the defendant. *Taken from old sec.* 710.

Upon a prosecution for falsely applying an imitation of a trade mark, with intent to defraud, it is open to the accused to attack the validity of the registered trade mark: and if, upon the evidence, it appears that the registered trade mark merely denotes the component parts of the goods, the registration is invalid. (77)

Sec. 448. Sec. **489. Selling goods falsely marked. — Defense.** *Unchanged.*

Sec. 449. Sec. **490. Defacing trade marks on Casks, etc. — Trading in bottles marked with a trade**

(74) Bischop v. Toler, 65 L. J. M. C. 1; Tremeear's Criminal Code, 377.

(75) R. v. Lipton, 32 L. R. (Ir.). 115.

(76) Christie Manson & Woods v. Copper, 2 Q. B., 522.

(77) R. v. Cruttenden, 10 Can. Cr. Cas., 223; 10 Ont. L. R., 80.

mark, without consent of owner.. — Every one is guilty of an indictable offence who, —

(*a*) wilfully defaces, conceals or removes the trade mark duly registered, or name of another person upon any cask, keg, bottle, siphon, vessel, can, case, or other package, unless such cask, keg, bottle, siphon, vessel, can, case or other package has been purchased from such other person, if the same shall have been so defaced, concealed or removed without the consent of, and with intention to defraud such other person;

(*b*) being a manufacturer, dealer or trader, or bottler, trades or traffics in any bottle or siphon which has upon it the trade mark duly registered or name of another person, without the written consent of such other person, or without such consent fills such bottle or siphon with any beverage for the purpose of sale or traffic.

2. The using by any manufacturer, dealer or trader or bottler, other than such other person, of any bottle or siphon for the sale therein of any beverage, or the having by any such manufacturer, dealer, trader or bottler upon any bottle or siphon such trade mark or name of such other person, or the buying, selling or trafficking in any such bottle or siphon without such written consent of such other person, or the fact that any junk dealer has in his possession any bottle or siphon having upon it such a trade mark or name without such written consent, shall be *prima facie* evidence of trading or trafficking within the meaning of paragraph (*b*) of this section.

Changed as here set forth.

A soda water manufacturer who fills, for the purpose of sale, bottles having the name of another manufacturer permanently placed thereon is guilty of an indictable offence under section 449 (now section 490) of the Code, unless the manufacturer whose name appears on the bottles has given a written consent to such

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filling. It is not essential to the offence that the name on the bottles should be registered as a trade mark. (78)

B., a mineral water manufacturer made use of bottles moulded with the name and address of W., another manufacturer, but caused a paper label, bearing his own name and address, to be put upon the bottles. The delivery was accompanied by an invoice, which left no doubt that B. was the vender. The magistrates dismissed the summons on the ground that B. had acted *innocently*. But the Queen's Bench Division held that an intent to defraud the purchaser was not an ingredient in the offence, and that B. was guilty of using a false trade description. (79)

Sec. 450. Sec. **491. Punishments.** — Every one guilty of an offence defined in this Part in respect to trade marks or names, or in respect to trade descriptions or false trade descriptions for which no penalty is in this Part otherwise provided, is liable, —

(*a*) on conviction on indictment,, to two years' imprisonment, with or without hard labor, or to a fine, or to both, imprisonment and fine; and

(*b*) on summary conviction, to four months' imprisonment, with or without hard labor, or to a fine not exceeding one hundred dollars; and, in case of a second or subsequent conviction, to six months' imprisonment, with or without hard labor, or to a fine not exceeding two hundred and fifty dollars.

2. In any case, every chattel, article, instrument or thing, by means of, or in relation to which the offence has been committed shall be forfeited.

Changed, as here set forth.

Sec. 451. Sec. **492. Falsely representing that goods are manufactured for His Majesty.** *Unchanged.*

Sec. 452. Sec. **493. Unlawful importation of goods liable to forfeiture.** *Unchanged.*

Sec. 453. Sec. **494. Defence where accused has acted innocently in ordinary course of business.** *Unchanged.*

Sec. 454. Sec. **495. Servant not liable.** *Unchanged.*

(78) R. v. Irvine, 9 Can. Cr. Cas., 407; 9 Ont. L. R., 389.
(79) Wood v. Burgess, 50 L. J. M. C., 11.

OFFENCES CONNECTED WITH TRADE AND BREACHES OF CONTRACT.

Sec. 516. Sec. **496. Conspiracy in restraint of trade.** *Unchanged.*

Sec. 517. Sec. **497. What acts in restraint are not unlawful.** *Unchanged.*

Sec. 518. **Prosecution for trade conspiracy.** *Omitted here.* (80)

Sec. 519. **Meanings of the expressions "trade combination" and "act."** (81)

Sec. 520. Sec. **498. Combinations in restraint of trade.** (82) *Unchanged.*

A person who organizes an association to restrict and control the business of retail coal dealing to the members of the association, and to prevent any one else from obtaining it from the foreign shippers at wholesale rates for resale in the district in which the association operates, is properly convicted, under this section, of conspiracy to prevent competition in the sale of a commodity which is the subject of trade. (83)

Even if section 1140, *post*, of the Code, which limits certain proceedings to certain delays after the offence could be held to apply to a prosecution by indictment, it would not apply to bar a prosecution for the above offence, inasmuch as the offence was a continuing one, the association remaining in active operation under the presidency of the defendant up to the commencement of the prosecution. (84)

Sec. 521. Sec. **499. Criminal breaches of contract.** Every one is guilty of an offence punishable, *on indictment on summary conviction,* before two justices and liable on conviction to a penalty not exceeding one hundred dollars or to three months' imprisonment, with or without hard labor, who —

(*a*) wilfully breaks any contract made by him knowing or having reasonable cause to believe that the probable consequence of his so doing either alone or in combination with others will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury; or

(80) Transferred to section 590, *post*.
(81) Transferred to sec. 2, subsection (38), *ante*.
(82) See sec. 581, *post*, giving right to option for trial without a jury.
(83) R. v. Elliott, 9 Ont. L. R., 648.
(84) *Ib.*

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(*b*) being bound, agreeing or assuming, under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof with electric light or power, gas or water, wilfully breaks such contract knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of power, light, gas, or water; or

(*c*) being bound, agreeing or assuming under any contract made by him with a railway company, or with His Majesty or any one on behalf of His Majesty in connection with a government railway on which His Majesty's mails, or passengers or freight are carried, to carry His Majesty's mails or to carry passengers or freight, wilfully breaks such contract knowing or having reason to believe that the probable consequences of his so doing either alone or in combination with others, will be to delay or prevent the running of any locomotive engine or tender or freight or passenger train, or car, on the railway.

Changed as here set forth.

Sec. " 2. Sec. " 2. **Municipal corporation or company supplying light, power, gas or water, wilfully breaking contract.** *Unchanged.*

Sec. " 3. Sec. " 3. **Railway Company breaking contract.** *Unchanged.*

Sec. " 4. Sec. " 4. **Malice not an element.** *Unchanged.*

Sec. 522. Sec. 500. **Posting up of provisions of law respecting criminal breaches of contract.** *Unchanged.*

Sec. 523. Sec. 501. **Intimidation.** Every one is guilty of an offence punishable, *at the option of the accused*, on indictment or on summary conviction before two justices, and liable on conviction to a fine not exceeding one hundred

dollars, or to three months' imprisonment with or without hard labor, *who*, wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do or to do anything from which he has a lawful right to abstain, —

(*a*) (*a*) uses violence, etc.
(*b*) (*b*) intimidates, etc.
(*c*) (*c*) persistently follows, etc.
(*d*) (*d*) hides any tools, etc.
(*e*) (*e*) with one or more other persons, follows, etc.
(*f*) (*f*) besets, etc. *Changed, as here set forth.*

Sec. 524. Sec. **502.** **Assaulting or using violence or threats of violence to hinder persons from working at any trade.** *Meaning unaltered.*

Sec. 525. Sec. **503.** **Intimidation of dealers, seamen and others.** *Meaning unaltered.*

Sec. 526. Sec. **504.** **Intimidation to hinder or prevent bidding on public lands.** *Unchanged.*

TRADING STAMPS.

Sec. **505.** **Issuing Trading Stamps.** Every one is guilty of an indictable offence and liable to one year's imprisonment, and to a fine not exceeding five hundred dollars, who, by himself or his employee or agent, directly or indirectly, issues, gives, sells or otherwise disposes of, or offers to issue, give, sell or otherwise dispose of trading stamps to a merchant or dealer in goods for use in his business.

Sec. **506.** **Giving trading stamps to a purchaser.** Every one is guilty of an indictable offence and liable to six months' imprisonment, and to a fine not exceeding two hundred dollars, who, being a merchant or dealer in goods, by himself or his employee or agent, directly or indirectly, gives or in any way disposes of, or offers to give or in any way dispose of, trading stamps to a purchaser from him of any such goods.

Sec. **507.** **Executive officers of offending company liable.** Any executive officer of a corpora-

tion or company guilty of an offence under the two last preceding sections who in any way aids or abets in or counsels or procures the commission of such offence, is guilty of an indictable offence and liable to the punishment stated in the said sections respectively.

Sec. **508.** **Receiving Trading Stamps.** Every one is guilty of an offence and liable, on summary conviction, to a fine not exceeding twenty dollars, who, being a purchaser of goods from a merchant or dealer in goods, directly or indirectly receives or takes trading stamps from the vendor of such goods or his employee or agent. *Added.*

PART VIII.

WILFUL AND FORBIDDEN ACTS IN RESPECT OF CERTAIN PROPERTY.

INTERPRETATION.

Sec. 481. Sec. **509.** **"Wilfully" defined.** Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed for the purposes of this Part to have caused it wilfully. *Paragraph 1 of old sec. 481.*

MISCHIEF.

Sec. 499. Sec. **510.** **Mischiefs causing danger to life, etc. — Punishments:** (A), **Imprisonment for life,** (B), **Fourteen years' imprisonment,** (C), **Seven years' imprisonment,** (D), **Five years' imprisonment,** and (E), **Two years' imprisonment,** — according to the object damaged, and the circumstances attending the act. *Meaning unchanged.*

A drainage ditch filled with water is not an "inland water" within the meaning of section 499, sub-section (*c*), — (now section 510 (c) sub-sec. (*c*), — making it an indictable offence to wilfully destroy or damage any inland water or canal. (85)

(85) R. v. Braun, 8 Can. Cr. Cas., 397.

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ARSON.

Sec. 482.	Sec. **511.**	**Punishment of Arson or setting fire to certain buildings, etc.**	*Meaning unchanged.*
Sec. 483.	Sec. **512.**	**Attempt to commit arson.**	*Unchanged.*

SETTING OTHER FIRES.

Sec. 484.	Sec. **513.**	**Setting fire to crops, etc.**	*Unchanged.*
Sec. 485.	Sec. **514.**	**Attempt to set fire to crops, etc.**	*Unchanged.*
Sec. 486.	Sec. **515.**	**Recklessly setting fire to any forest, etc.**	*Unchanged.*
Sec. 487.	Sec. **516.**	**Threats to burn.**	*Unchanged.*
Sec. 488.		**Placing or throwing explosives with intent to damage or destroy anything.**	*Made into sec.* 112, *ante.*

RAILWAYS, MINES AND ELECTRIC PLANT.

Sec. 489.	Sec. **517.**	**Injuries affecting railways and likely to endanger property.**	*Unchanged.*
Sec. 490.	Sec. **518.**	**Obstructing the construction or use of any railway.**	*Unchanged.*
Sec. 491.	Sec. **519.**	**Destroying or damaging goods in custody of a railway, etc.**	*Unchanged.*
Sec. 498.	Sec. **520.**	**Mischief to mines, etc.**	*Unchanged.*
Sec. 492.	Sec. **521.**	**Damaging any electric telegraph, telephone, or fire-alarm.**	*Unchanged.*

VESSELS AND RAFTS.

Sec. 493.	Sec. **522.**	**Wrecking.**	*Unchanged.*
Sec. 494.	Sec. **523.**	**Attempting to wreck.**	*Unchanged.*
Sec. 496.	Sec. **524.**	**Preventing the saving of wrecked vessels, or wreck.**	*Meaning unchanged.*
Sec. 497.	Sec. **525.**	**Injuries to dams, piers, rafts, etc.**	*Unchanged.*

PUBLIC PROPERTY.

Sec. 495.	Sec. **526.**	**Interfering with marine signals, buoys, etc.**	*Unchanged.*
Sec. 507*a*.	Sec. **527.**	**Removing harbor bars.**	*Unchanged.*
Sec. 503.	Sec. **528.**	**Injuries to election documents.**	*Unchanged.*

BUILDINGS, FENCES AND LAND MARKS.

Sec. 504.	Sec. **529.**	**Injuries to buildings, etc., by tenants or mortgagors.**	*Unchanged.*

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Sec. 507.	Sec. **530.** **Injuries to fences, etc.**	*Unchanged.*
Sec. 505.	Sec. **531.** **Injuring or removing marks indicating the boundaries of any province, county, etc.**	*Unchanged.*
Sec. 506.	Sec. **532.** **Injuring or removing other boundary marks.**	*Unchanged.*

TREES, VEGETABLES, ROOTS AND PLANTS.

Sec. 508.	Sec. **533.** **Injuries to trees, etc., wheresoever growing.**	*Unchanged.*
Sec. 509.	Sec. **534.** **Injuries to vegetable productions in gardens.**	*Unchanged.*
Sec. 510.	Sec. **535,** **Injuries to cultivated roots or plants not growing in a garden, etc.**	*Unchanged.*

CATTLE OR OTHER ANIMALS.

Sec. 500.	Sec. **536.** **Attempting to kill or injure or poison cattle.**	*Unchanged.*
Sec. 501.	Sec. **537.** **Injuries to other animals.**	*Unchanged.*
Sec. 502.	Sec. **538.** **Threats by letters to injure cattle.**	*Unchanged.*

CASES NOT SPECIALLY PROVIDED FOR.

Sec. 511. Sec. **539.** Every one who wilfully commits any damage, injury or spoil to or upon any real or personal property, either corporeal or incorporeal and either of public or private nature, for which no punishment is hereinbefore provided, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars, and such further sum, not exceeding twenty dollars, as appears to the justice to be a reasonable compensation for the damage, injury or spoil so committed, to be paid in the case of private property, to the person aggrieved.

2. If such sums of money, together with the costs, if ordered, are not paid either immediately after the conviction, or within such period as the justice, at the time of the conviction appoints, the justice may cause the offender to be imprisoned for any term not exceeding two months, with or without hard labour. (86)

A summary conviction under this section for wilful injury to property should specify the act done and the nature of the property injured, or it will be void for uncertainty. (87)

LIMITATION.

Sec. 511. Sec. **540. Fair claim of Right. — And Sporting.** — Nothing in the last preceding section extends to, —

(*a*) any case where the person acted under a fair and reasonable supposition that he had a right to do the act complained of; or

(*b*) any trespass, not being wilful and malicious, committed in hunting or fishing, or in the pursuit of game. (86)

Sec. 481. Sec. **541. Color of right. — Partial interest.** — Nothing shall be an offence under any of the foregoing provisions of this Part, unless it is done without legal justification or excuse, and without color of right.

2 Where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, and if total, shall not prevent his act being an offence, if done with intent to defraud.

Paragraphs 2 *and* 3 *of old sec.* 481.

The "color of right" on the part of the defendant, — which, under this section, removes the criminal character of an act of damage to property, — means an honest belief in a state of facts, which, if it actually existed, would constitute a legal justification or excuse. Proof of such "color of right" in respect of the destruction of a fence complained of under Part XXXVII of the old Code, (now Part VIII of the new Act) ousts the jurisdiction of the magistrate to summarily try the charge. (88)

Upon an information against a game-keeper, under section 41 of the Imperial *Malicious Damage Act* 1861, for unlawfully and maliciously killing a dog, it was held to be a defence to show that the defendant did the act in the *bona fide* belief that it was necessary for the protection of his master's property, and that noth-

(86) The old sec. 511 is made into the two new sections 539 and 540.
(87) R. v. Leary, 8 Can. Cr. Cas., 141.
(88) R. v. Johnson, 8 Can. Cr. Cas., 123; 7 Ont. L. R., 525.

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ing else could have been done which would effectually have protected it. (89)

CRUELTY TO ANIMALS.

Sec. 512.	Sec. **542.** **Ill-treating or ill-using any cattle, etc., or fighting any bull, dog, etc.**	*Unchanged.*
Sec. 513.	Sec. **543.** **Keeping Cockpit.**	*Unchanged.*
Sec. 514.	Sec. **544.** **Conveyance by railways, etc., of cattle without proper rest and nourishment.**	*Unchanged.*
Sec. 515.	Sec. **545.** **Search of premises. Obstructing Officer.**	*Unchanged.*

PART IX.

OFFENCES RELATING TO BANK NOTES, COIN AND COUNTERFEIT MONEY.

Interpretation.

Sec. 460.	Sec. **546.** **Definitions.** — Meanings of —	
(*a*)	(*a*) '**current gold or silver coin.**'	*Unchanged.*
(*b*)	(*b*) '**current copper coin.**'	*Unchanged.*
(*c*)	'**copper coin.**'	*Omitted here.* (90)
(*d*)	(*c*) '**counterfeit**' means false, not genuine.	(91)
(i)		*Omitted here.* (92)
(ii)		*Omitted here.* (92)
(*e*)	(*d*) '**gild**' and '**silver.**'	*Unchanged.*
(*f*)	(*e*) '**utter.**'	*Unchanged.*
	(*f*) '**counterfeit token of value**' means any spurious or counterfeit coin, paper money, inland revenue stamp, postage stamp, or other evidence of value, by whatever technical, trivial or deceptive designation the same may be described, and includes also any coin or paper money, which although genuine has no value as money. (93)	
Sec. 460.	Sec. **547.** **A genuine coin altered, etc.** Any genuine coin prepared or altered so as to resemble or pass for any current coin of a higher denomination is a counterfeit coin.	

(89) Miles v. Hutchings, 72 L. J., K. B., 775; [1903], 2 K. B., 714.
(90) Transferred to sec. 2, subsec. (8), *ante*.
(91) Taken from par. 1 of sec. 460 (*d*) of the old Act.
(92) Made into sec. 547, *post*.
(93) Taken from the first half of the old sec. 479.

2. A coin fraudulently filed or cut at the edges so as to remove the milling, and on which a new milling has been added to restore the appearance of the coin, is a counterfeit coin. (94)

CERTAIN OFFENCES — WHEN COMPLETE.

Sec. 461. Sec. **548. Complete, although intended counterfeiting not perfected.** *Unchanged.*

Sec. 479. Sec. **549. Coin, etc., genuine but valueless.** In the case of coin or paper money, which, although genuine, has no value as money, it is necessary, in order to constitute an offence under this Part, that there should be knowledge, on the part of the person charged, that such coin or paper money was of no value as money, and a fraudulent intent on his part in his dealings with or with respect to the same. (95)

BANK NOTES.

Sec. 430. Sec. **550. Purchasing, receiving or possessing forged bank notes.** *Unchanged.*

The taking possession of or using a counterfeit token of value is an offence under section 569, *post*, but if such counterfeit be also a forged bank note, the prosecution may be under section 550 for the offence of having a forged bank note in possession knowing it to be forged. (96)

Sec. 442. Sec. **551. Printing circulars, etc., in the likeness of bank notes.** *Unchanged.*

COIN.

Sec. 462. Sec. **552. Counterfeiting gold or silver coins.** *Unchanged.*

Sec. 463. Sec. **553. Dealing in, or importing or receiving into Canada any counterfeit gold or silver coin.** *Unchanged.*

Sec. 464. Sec. **554. Manufacturing or importing copper coin.** *Unchanged.*

(94) Clauses (i) and (ii) of par. (*d*) of old sec. 460.
(95) Latter half of old sec. 479.
(96) R. v. Tutty, 9 Can. Cr. Cas., 544.

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Sec. 465.	Sec. **555.** **Exportation of counterfeit coin..**	*Unchanged.*
Sec. 466.	Sec. **556.** **Making or possessing instruments for coining.**	*Unchanged.*
Sec. 467.	Sec. **557.** **Conveying Coining Instruments out of mints into Canada.**	*Unchanged.*
Sec. 468.	Sec. **558.** **Clipping current gold or silver coin.**	*Unchanged.*
Sec. 469.	Sec. **559.** **Defacing current coin.**	*Unchanged.*
Sec. 470.	Sec. **560.** **Possessing clippings of current gold or silver coin.**	*Unchanged.*
Sec. 471.	Sec. **561.** **Possessing counterfeit coins, with intent to utter.**	*Unchanged.*
Sec. 472.	Sec. **562.** **Making or dealing in counterfeit copper coin.**	*Unchanged.*
Sec. 473.	Sec. **563.** **Offences respecting foreign coins.**	*Unchanged.*
Sec. 474.	Sec. **564.** **Uttering counterfeit gold or silver coin.**	*Unchanged.*
Sec. 475.	Sec. **565.** **Uttering light gold or silver coin, or false gold or silver coin, or counterfeit copper coin.**	*Unchanged.*
Sec. 476.	Sec. **566.** **Uttering defaced coin.**	*Unchanged.*
Sec. 477.	Sec. **567.** **Uttering uncurrent copper coin.**	*Unchanged.*
Sec. 478.	Sec. **568.** **Punishment on conviction for a second offence.**	*Meaning unchanged.*

ADVERTIZING COUNTERFEIT MONEY.

Sec. 479.		"Counterfeit token of value" interpreted (97)
Sec. 479.		Coin, etc., genuine but valueless. (98)
Sec. 480.	Sec. **569.**	**Punishment for advertizing, possessing or using counterfeit money.** *Unchanged* (99)

PART X.

ATTEMPTS — CONSPIRACIES — ACCESSORIES.

Sec. 528.	Sec. **570.** **Attempt to commit certain indictable offences.**	*Unchanged.*
Sec. 529.	Sec. **571.** **Attempt to commit other indictable offences.**	*Unchanged.*

(97) Transferred to sec. 546 (*f*), *ante*.
(98) Made into sec. 549, *ante*.
(99) Except in the arrangement and order of the paragraphs.

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Sec. 530.	Sec. **572.** **Attempt to commit statutory offences.**	*Unchanged.*
Sec. 527.	Sec. **573.** **Conspiring to commit indictable offence.**	*Unchanged.*
Sec. 531.	Sec. **574.** **Accessory after the fact to certain indictable offences.**	*Unchanged.*
Sec. 532.	Sec. **575.** **Accessory after the fact to other indictable offences.**	*Unchanged.*

CRIMINAL PROCEDURE.

PART XI.

JURISDICTION.

Rules of Court.

Sec. 533.	Sec. **576.** **Power of every Superior Court of Criminal Jurisdiction to make rules.**	*Meaning unchanged.*
Sec. 534.	**Civil remedy not suspended.**	*Omitted here.* (1)
Sec. 535.	**Distinction between felony and misdemeanor abolished.**	*Omitted here.* (2)
Sec. 536	**Construction of Acts with reference to offences which are or are not indictable.**	*Omitted here.* (3)
Sec. 537.	**Construction of references to Speedy Trials Acts, etc.**	*Omitted here.* (4)

GENERAL.

Sec. 640. Sec. **577.** **Jurisdiction of Courts generally.** — Unless otherwise specially provided in this Act, every court of criminal jurisdiction in any province is competent to try any crime or offence within the jurisdiction of such court to try, wherever committed within the province, if the accused is found or apprehended

(1) And made into sec. 13, p. 12, *ante*.
(2) And made into sec. 14, p. 12, *ante*.
(3) Transferred to and now forming sec. 28 of the new *Interpretation Act*, (R. S., 1906, c. 1). See p. 8, *ante*.
(4) Transferred to and now forming sec. 29 of the new *Interpretation Act*. See p. 8, *ante*.

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or is in custody within the jurisdiction of such court or if he has been committed for trial to such court or ordered to be tried before such court, or before any other court, the jurisdiction of which has by lawful authority been transferred to such first mentioned court under any Act for the time being in force.

Paragraph 1 *of old sec.* 640. (5)

Sec. **578. Certain persons not to try Intimidation cases.** — No person who is a master, or the father, son or brother of a master in the particular manufacture, trade or business, in or in connection with which any offence under section five hundred and one is charged to have been committed, shall act as a magistrate or justice in any case of complaint or information under that section, or as a member of any court for hearing any appeal in any such case. *Added.*

INDICTABLE OFFENCES.

Sec. 753. Sec. **579. Reserve for final decision of questions raised at trial of an indictable offence.**

Unchanged.

Sec. 538. Sec. **580. Jurisdiction of Superior Courts of Criminal Jurisdiction over indictable offences.**

Unchanged.

Sec. **581. Option for non-jury trial in trade conspiracy cases.** — Where an indictment is found against any person for offences provided against in this Act, the defendant or person accused shall have the option to be tried before the Judge presiding at the Court at which such indictment is found, or the Judge presiding at any subsequent sitting of such Court, or at any Court where the indictment comes on for trial, without the intervention of a Jury; and in the event of such option being exercised the proceedings subsequent thereto shall be regulated, in so far as may be applicable, by Part XVIII. *Added.* (6)

(5) The remainder of par. 1 and the whole of par. 2 of the old sec. 640 are made into sec. 888, *post*.

(6) Taken from section 4 of the 32 Vic., c. 41, forming part of the Appendix to the old Criminal Code.

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Sec. 539. Sec. **582. Jurisdiction of General Sessions and certain other courts to try indictable offences.**

Unchanged.

Sec. 540. Sec. **583. Cases within the exclusive jurisdiction of Superior Courts of Criminal Jurisdiction.** — No court mentioned in the last preceding section has power to try any offence under sections, —

(*a*) seventy-four, treason; seventy-six, accessories after the fact to treason; seventy-seven, seventy-eight, and seventy-nine, treasonable offences; eighty, assaults on the King; eighty-one, inciting to mutiny; eighty-five, unlawfully obtaining and communicating official information; eighty-six, communicating information acquired in office; or,

(*b*) one hundred and twenty-nine, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and thirty, administering, taking or procuring the taking of other unlawful oaths; one hundred and thirty-four, seditious offences; one hundred and thirty-five, libels on foreign sovereigns; one hundred and thirty-six, spreading false news; or,

(*c*) one hundred and thirty-seven to one hundred and forty inclusive, piracy; or,

(*d*) one hundred and fifty-six, judicial, etc., corruption; one hundred and fifty-seven, corruption of officers employed in prosecuting offenders; one hundred and fifty-eight, frauds upon the Government; one hundred and sixty, breach of trust by a public officer; one hundred and sixty-one, municipal corruption; one hundred and sixty-two (*a*), selling offices; or,

(*e*) two hundred and sixty-three, murder; two hundred and sixty-four, attempt to murder; two hundred and sixty-five, threat to murder; two hundred and sixty-six, conspiracy to murder; two hundred and sixty-seven, accessory after the fact to murder; or,

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(*f*) two hundred and ninety-nine, rape; three hundred, attempt to commit rape; or,

(*g*) three hundred and seventeen to three hundred and thirty-four, defamatory libel; or,

(*h*) four hundred and ninety-eight, combination in restraint of trade; or,

(*i*) conspiring or attempting to commit, or being accessory after the fact to any of the offences in this section before mentioned; or,

(*j*) any indictment for bribery or undue influence, personation or other corrupt practice under the Dominion Elections Act. *Altered, as here set forth.*

Sec. 541. **Officials with powers of two justices.** *Omitted here.* (7)

SPECIAL JURISDICTION.

Sec. 553. Sec. **584. Magisterial Jurisdiction over offences committed on water, etc., between two jurisdictions, or on or near the boundary of two jurisdictions, or in course of a journey, etc.** *Meaning unchanged.*

The offence of fraudulent conversion of the proceeds of a valuable security, mentioned in sec. 308 (now sec. 355) of the Code, consists of a continuity of acts — the reception of the valuable security, the collection of the proceeds, the conversion of the proceeds, and lastly, the failure to account for the proceeds; and where the beginning of the operation is in one district and the continuation and completion are in another district, the accused may be arrested and proceeded against in either district. (8)

Sec. 555. Sec. **585. Offences in unorganized tracts in Ontario.**— All offences committed in any of the unorganized tracts of country in the province of Ontario, including lakes, rivers and other waters therein, not embraced within the limits of any organized county, or within any provisional judicial district, may be laid and charged to have been committed and may be inquired of, tried and punished within

(7) Made into sec. 604, *post.*
(8) R. v. Hogle, 5 Can. Cr. Cas., 53.

any county of such province; and such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such county, before which court such offences may be prosecuted; and such court shall proceed therein to trial, judgment and execution or other punishment for such offence, in the same manner as if such offence had been committed within the county where such trial is had.

2. Where any provisional judicial district or new county is formed and established in any of such unorganized tracts, all offences committed within the limits of such provisional judicial district or new county, shall be inquired of, tried and punished within the same, in like manner as such offences would have been inquired of, tried and punished if this section had not been passed.

3. Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the province of Ontario. *Unchanged.* (9)

Sec. 586. **Offences committed north of Ontario and Quebec.** — All offences committed in any part of Canada, *not in a province duly constituted as such and not in the Yukon Territory*, may be inquired of and tried within any district, county or place in any province *so constituted or in the Yukon Territory, as may be most convenient.*

2. Such offences shall be within the jurisdiction of any court having jurisdiction over offences of the like nature committed within the limits of such district, county or place.

3. Such court shall proceed therein to trial, judgment and execution or other punishment for any such offence in the same manner as if such offence had been committed within the district, county or place where such trial is had.

(9) Except that the greater part of par. 3 of the old sec. 555 is here omitted and made into sec. 36 of the *Prisons and Reformatories Act* (R. S., 1906, c. 148).

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Added. (*Since amended by the Criminal Code Amendment Act*, 1907, *sec.* 2).

Sec. **587. Competency of provincial courts.**—

The several courts of criminal jurisdiction in the provinces aforesaid, and in the Yukon Territory, including justices, shall have the same powers, jurisdiction and authority in case of such offences, as they respectively have with reference to offences within their ordinary jurisdiction as provincial or territorial courts.

Added. (*Since amended by the Criminal Code Amendment Act*, 1907, *sec.* 2).

Sec. 556. Sec. **588. Offences committed in the district of Gaspé.**

Unchanged.

PART XII.

SPECIAL PROCEDURE AND POWERS.—OFFENCES REQUIRING STATUTE.

Sec. **589. Offences against Imperial Statutes.** — No person shall be proceeded against for any offence against any Act of the Parliament of England, of Great Britain, or of the United Kingdom of Great Britain and Ireland, unless such Act is, by the express terms thereof, or of some other Act of such Parliament, made applicable to Canada or some portion thereof as part of His Majesty's dominions or possessions.

Section 5 of old Code.

Sec. **590. Prosecution for Trade Conspiracy.**—No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any *act* or causing any *act* to be done for the purpose of a trade combination, unless such *act* is an *offence* punishable by statute. *Section 518 of old Code.*

CASES REQUIRING OFFICIAL CONSENT.

Sec. 542. Sec. **591. Offences within the jurisdiction of the Admiralty and requiring for their prosecution the consent of the Governor-General.**

Unchanged.

A charge against a seaman, not a British subject, on a British ship, for inciting a revolt upon the ship while on the high seas cannot, if taken under section 128 of the old Code (now section 138 of the new Code) be made without the consent of the Governor-General obtained prior to the laying of the information. (10)

Sec. 543. Sec. **592.** **Consent of Attorney General required in prosecutions for disclosing official secrets,**

or

Sec. 544. Sec. **593.** **for Judicial Corruption,**

or

Sec. 545. Sec. **594.** **for making explosives.** (11)

Sec. 546. Sec. **595.** **Consent of Minister of Marine and Fisheries required in prosecutions for sending unseaworthy ship to sea.** (11)

Sec. 547. Sec. **596.** **Consent of Attorney General required in prosecutions for criminal breach of trust,**

or

Sec. 548. Sec. **597.** **for concealing deeds or encumbrances or falsifying pedigrees,**

or

Sec. 549. Sec. **598.** **for uttering defaced coin.** (11)

PROVISIONS AS TO ONTARIO AND NOVA SCOTIA.

Sec. 754. Sec. **599.** **Practice in the High Court of Justice in Ontario.** *Unchanged.*

Sec. 755. Sec. **600.** **Commission of Court of Assize, etc., in Ontario.** *Unchanged.*

Sec. 756. Sec. **601.** **Gaol Delivery by Court of General Sessions in Ontario.** *Unchanged.*

Sec. 760. Sec. **602.** **Calendar of Criminal Cases in Nova Scotia.** *Unchanged.*

Sec. 761. Sec. **603.** **Sentences in Nova Scotia.** *Unchanged.*

The omission to send to a Grand Jury the depositions taken on the preliminary enquiry, as required in Nova Scotia, under this section, will not invalidate an indictment found without such depositions. (12)

POWERS OF CERTAIN OFFICIALS.

Sec. 541. Sec. **604.** **Officials exercising the powers of two justices.** The Judge of the Sessions of the Peace for the City of Quebec, the Judge of

(10) R. v. Heckman, 5 Can. Cr. Cas., 242.
(11) Meanings unchanged.
(12) R. v. Turpin, 8 Can. Cr. Cas., 59.

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	the Sessions of the Peace for the City of Montreal, and every recorder, police magistrate, district magistrate or stipendiary magistrate appointed for any territorial division, and every magistrate authorized by the law of the province in which he acts to perform acts usually required to be done by two or more justices, may do alone whatever is authorized by this Act to be done by any two or more justices.	*Meaning unchanged.*
Sec. 557*a*.	Sec. **605.** **Clerk of the Peace in Montreal.** In the district of Montreal the Clerk of the Peace or Deputy Clerk of the Peace shall have all the powers of a justice under Parts XIII and XIV, and under sections six hundred and twenty-nine to six hundred and forty-three inclusive.	*Slightly altered, as here set forth.*
	Sec. **606.** **Jurisdiction as to prize fights.** Every judge of a Superior Court or of a county court, judge of the sessions of the peace, stipendiary magistrate, police magistrate, and commissioner of police of Canada, shall, within the limits of his jurisdiction as such judge, magistrate or commissioner, have all the powers of a justice with respect to offences against provisions of this Act as to prize fights.	*Added.* (13)
Sec. 908.	Sec. **607.** **Preserving order in court.** — Every judge of the sessions of the peace, chairman of the court of general sessions of the peace, police magistrate, district magistrate or stipendiary magistrate shall have such and the like powers and authority to preserve order in courts held by them during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any Court in Canada or by the judges thereof, during the sittings thereof.	*Slightly altered, as here set forth.*

There is no doubt that any judicial officer, (including a justice of the peace), when trying a case or performing other judicial

(13) Taken from R. S. C., 1886, c. 153, forming part of the Appendix to the old Criminal Code.

acts, has the power to order the removal and exclusion, from the place where the trial is going on, of all persons who interrupt or obstruct the proceedings by disorderly conduct, insulting words, or in any other way; such power being indispensable for the proper exercise of the officer's judicial functions. (14) And if, while any judge of sessions, magistrate or other functionary mentioned in the above section 607, is acting judicially, a person charge him to his face of being corrupt or partial, such judge, magistrate or other functionary may commit the offender for contempt, provided the commitment be made out in writing and be for a time certain. (15)

All the powers given by section 607 to the magistrates therein mentioned are not exerciseable by a single justice, who, — although he may order the removal and exclusion of persons obstructing or interfering, by their disorderly conduct, with the business of the court, — has no power to commit for contempt: (16) except to this extent, that, when holding a preliminary inquiry, — he is, by sec. 678, *post*, empowered to commit for contempt any person who, being subpœnaed or otherwise present, refuses to be sworn or to answer questions, or refuses to produce any documents or to sign his deposition.

When the exclusion of a person, acting in an improper manner, is ordered, it should be done by means of a written order, or a warrant, under seal, to a constable, authorizing the exclusion, and setting forth the grounds and the particulars of the improper conduct.

And, when a magistrate commits a person for contempt, he must do it by a regular conviction; that is, he must call upon the offending party to defend himself and to show cause why he should not be convicted; and, having allowed him to be heard, he should then, at once, enter an adjudication convicting the party, and awarding the punishment; (17) and he should issue a formal warrant of commitment under his hand and seal, setting out the facts which constitute the contempt. For, although a Superior Court of Criminal Jurisdiction has the right to intervene and prevent any usurpation of jurisdiction by a magistrate, treating as a contempt that which there is no reasonable ground for so treating, it has no power to act as a court of appeal from the magistrate's finding upon a matter of fact, nor to review the facts stated in the warrant of commitment; but, if there be no formal

(14) Young v. Saylor, 23 O. R., 513; 20 Ont. A. R., 645.

(15) R. v. James, 6 B. and A., 849; R. v. Scott, 2 U. C. L. J., N. S., 323; Armstrong v. McCaffrey, 12 N. B. R., 525; R. v. Skipworth, 12 Cox C. C., 371.

(16) Young v. Saylor, *supra*.

(17) McKenzie v. Newburn, 6 O. S., 486.

warrant issued, the magistrate must, in that case, establish such facts as will justify his action, if it is questioned. (18)

The commitment must be for a definite period; (19) and there is no power to award hard labor.

The contempt may be shown either by language or manner, and even by language, not offensive in itself, if it be uttered offensively. (20)

For a person to say, in court, of a magistrate, in reference to his judgment, "That is a most unjust remark," is a wilful insult and contempt; (21) and so is a reflection, in any way, upon the magistrate's honesty and impartiality. (22)

A magistrate, who is abused and insulted, while acting judicially, may, instead of exercising, himself, the power of committal for contempt, proceed, if he thinks fit, in a less summary manner, by way of indictment against the offender. (23)

A person who indemnifies another against the consequences of contempt involves himself in the same. (24)

The power of a magistrate to commit for contempt does not exist when the abuse or insult is offered while the magistrate is acting ministerially, (25) nor for contempts committed out of court.
(26)

Slanderous words spoken of a magistrate, behind his back, out of court, are not indictable; (27) although, like any other person, the magistrate or justice thus slandered may have a civil action of damages, therefor.

The power of exclusion and the power of punishment for contempt should be exercised with great forbearance, and with the sole view of maintaining proper order and decorum during the performance by a magistrate of his judicial functions. (28)

The importance of maintaining proper respect for and decorum before magistrates and justices in the exercise of their duty should render them careful not to be guilty themselves of any abuse of

(18) R. v. Jordan, 36 W. R., 589; *Ex p.* Lees and Judge of Carleton, 24 U. C., C. P., 214.
(19) *Ex p.* Porter, 5 B. & S., 299.
(20) Carus Wilson's Case, 7 Q. B., 115.
(21) R. v. Jordan, *supra.*
(22) R. v. Skipworth, *supra.*
(23) R. v. Revel, 1 Str., 420.
(24) Plating Co. v. Farquharson, L. R., 17 Ch., 49.
(25) Mayhew v. Locke, 7 Taunt., 63.
(26) *Re* Scaife, 5 B. C. R., 153. See R. v. Payne, [1896], 1 Q. B., 577 and *In re* Bonnar, 39 C. L. J., 532.
(27) R. v. Weltje, 2 Camp., 142; R. v. Pocock, 2 Str., 1157; R. v. Brompton, [1893], 2 Q. B., 195; R. v. Lefroy, L. R., 8 Q. B., 134.
(28) Heywood v. Waite, 18 W. R., 205.

their position, and not to inflict a wrong upon, nor maliciously punish, a party or a witness by the use of insulting or improper language. A justice who makes use of language of this character, without any legal justification, will be liable for exemplary damages. (29)

For form of warrant of commitment for contempt, see Crankshaw's Practical Guide to Magistrates, 2nd Ed., p. 32.

Sec. 909. Sec. **608. Resistance to execution of process. Special Powers and Duties of certain officials.**

Unchanged.

Sec. **609. Arrest of person carrying weapon in proclaimed district.** — Any commissioner or justice, constable or peace officer, or any person acting under a warrant, in aid of any constable or peace officer, may arrest and detain any person employed on any public work, found carrying any weapon, within any place in which Part III. is, at the time in force, at such time and in such manner as in the judgment of such commissioner, justice, constable or peace officer, or person acting under a warrant, afford just cause of suspicion that it is carried for purposes dangerous to the public peace.

2. The justice or commissioner arresting such person, or before whom he is brought, may commit him for trial unless he gives sufficient bail for his appearance at the next term or sitting of the Court before which the offence can be tried, to answer to any indictment to be then preferred against him. *Added.* (30)

Sec. **610. Search warrant for weapon.** — Any commissioner or any justice having authority within any place in which Part III. is at the time in force, upon oath before him of belief of the deponent that any weapon is in the possession of any person or in any house or place contrary to the provisions of Part III., may issue his warrant to any constable or peace officer to search for and seize the same.

(29) Olmsold v. Muchell, 25 U. C., Q. B., 80; 26 U. C., Q. B., 422.

(30) Taken from the R. S. C., 1886, c. 151, forming part of the Appendix to the old Criminal Code.

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2. Such constable or peace officer or any person in his aid, may search for and seize the same in the possession of any person, or in any such house or place. *Added* (30)

Sec. 611. **Right of entry for search.** — If the admission to any such house or place is refused after demand, such constable or peace officer and any person in his aid, may enter the same by force, by day or by night, and seize any such weapon and deliver it to such commissioner or justice.

2. Unless the person in whose possession or in whose house or premises the same is found, within four days next after the seizure, proves to the satisfaction of such commissioner or justice that the weapon so seized was not in his possession or in his house or place contrary to the provisions of Part III., such weapon shall be forfeited to the use of His Majesty. *Added* (30)

Sec. 612. **Disposal of forfeited arms.** — All weapons declared forfeited under Part III. shall be sold or destroyed under the direction of the commissioner or justice by whom or by whose authority the same are seized, or before whom the same are brought, and the proceeds of such sale, after deducting necessary expenses, shall be received by such commissioner and paid over by him to the Minister of Finance for the public uses of Canada. *Added* (30)

Sec. 613. **Search for and seizure of liquors in proclaimed district.** — If any person makes oath or affirmation before any such commissioner or justice, that he has reason to believe, and does believe, that any intoxicating liquor with respect to which a violation of the provisions of section one hundred and fifty has been committed or is intended to be committed is on board of any steamboat, vessel, boat, canoe, raft or other craft, or in any railway carriage, or freight car, or in any carriage, vehicle or other conveyance, or in any railway station, freight shed or other

(30) Taken from the R. S. C., 1886, c. 151, forming part of the Appendix to the old Criminal Code.

railway building, or in or about any other building or premises, or in any other place within the limits specified in any proclamation under the said Part, the commissioner or justice shall issue a search warrant to any sheriff, police officer, constable or bailiff who shall forthwith proceed to search the steamboat, vessel, boat, canoe, raft, other craft, or the railway carriage freight car, or the carriage, vehicle or conveyance or the railway station freight shed or other railway building or the other building or premises, or the place described in such search warrant.

2. If any intoxicating liquor is found therein or thereon the person executing such search warrant shall seize the intoxicating liquor and the barrels, casks, jars, bottles or other packages in which it is contained and shall keep it and them secure until final action is had thereon.

3. No dwelling house in which, or in part of which, or on the premises whereof, a shop or bar is not kept shall be searched, unless the said informant also makes oath or affirmation that some offence in violation of the provisions of the said section has been committed therein or therefrom within one month next preceding the time of making his said information for a search warrant.

Added. (30*a*)

Sec. 614. **Owner to be summoned, and the liquor to be forfeited and destroyed.** The owner, keeper or person in possession of the intoxicating liquor so seized, if he is known to the officer so seizing it shall be brought forthwith before the Commissioner or justice who issued the search warrant, and, if it appears to the satisfaction of the commissioner or justice that a violation of the provisions of the said section has been committed or was intended to be committed, with respect to such intoxicating liquor, it shall be declared forfeited, with any package in which it is con-

(30*a*) Taken from the R. S. C., 1886, c. 151, forming part of the Appendix to the old Criminal Code. (*As amended by the* 6 *and* 7 *Ed.* 7, c. 9, *sections* 4 *and* 5).

tained, and shall be destroyed by authority of the written order to that effect of the Commissioner or Justice, and in his presence or in the presence of some person appointed by him to witness the destruction thereof.

2. Such Commissioner or Justice or the person so appointed by him, and the officer by whom the said intoxicating liquor has been destroyed, shall jointly attest, in writing upon the back of the said order, the fact that it has been destroyed. *Added.* (30*a*)

Section 6 of the 6 and 7 Ed. VII, c. 9, provides that, "Every officer appointed under Part III of the *Criminal Code*, and every constable appointed under any law of Canada, may seize, upon view, anywhere within the limits specified in any proclamation under the said Part any intoxicating liquor in respect of which he has reason to believe that a violation of the provisions of the said Part is intended, and he shall forthwith convey any liquor so seized together with the owner or person in possession thereof before a commissioner or justice who shall thereupon proceed as is provided in section 614."

Sec. **615. Owner, keeper, or possessor may be convicted at once.** The owner, keeper or person in possession of any intoxicating liquor so seized and forfeited may be convicted of an offence against the said section without any further information laid or trial had, and shall be liable to the penalties mentioned in section one hundred and fifty-one. *Added.* (30)

Sec. **616. Procedure if owner unknown.** If the owner, keeper or possessor of intoxicating liquor seized as aforesaid, is unknown to the officer seizing the same it shall not be condemned and destroyed until the fact of such seizure with the number and description of the packages, as near as may be, has been advertised for two weeks, by posting up a written or a printed notice and description thereof, in at least three public places of the place where it was seized.

2. If it is proved within such two weeks, to the satisfaction of the Commissioner or Justice by whose authority such intoxicating liquor

(30*a*) Taken from the R. S. C., 1886, c. 151, forming part of the Appendix to the old Criminal Code. (*As amended by the 6 and 7 Ed. 7, c. 9, sections 4 and 5*).

was seized, that with respect to such intoxicating liquor no violation of the provisions of section 150 has been committed or is intended to be committed it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor in writing upon the back of the search warrant, which shall be returned to the Commissioner or Justice who issued the same.

3. If after such advertisement as aforesaid, it appears to such Commissioner or Justice that a violation of the provisions of the said section has been committed or is intended to be committed, then such intoxicating liquor, with any package in which it is contained, shall be forfeited and destroyed, as herein before provided. *Added.* (31)

Sec. 617. **Evidence of precise description of liquor not necessary.** In any prosecution under this Act for any offence with respect to intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor with respect to which the offence has been committed, or to the precise consideration therefor, or to the fact of the offence having been committed with his participation or to his own personal and certain knowledge; but the commissioner or justice trying the case, so soon as it appears to him that the circumstances in evidence sufficiently establish the offence complained of, shall put the defendant on his defence, and in default of such evidence being rebutted, shall convict the defendant accordingly. *Added.* (31)

Sec. 618. **The provisions of Part XV relating to summary convictions apply.** Any commissioner or justice may hear and determine, in manner provided by Part XV., any case arising within his jurisdiction.

2. All the provisions of Part XV. shall, in so far as they are not inconsistent with this Part, apply to every commissioner or justice

(31) Taken from the R. S. C., 1886, c. 151, forming part of the Appendix to the old Criminal Code.

mentioned in this Part or empowered to try offenders against Part III.

3. Every such commissioner shall be deemed a justice within the meaning of Part XV., whether he is or is not a justice for other purposes. *Added.* (31)

Sec. **619.** **Justices may disarm persons attending meeting.** Any justice within whose jurisdiction any public meeting is appointed to be held may demand, have and take of and from any person attending such meeting, or on his way to attend the same, without his consent and against his will, by such force as is necessary for that purpose, any offensive weapon, such as firearms, swords, staves, bludgeons, or the like, with which any such person is so armed, or which any such person has in his possession. *Added.* (31*a*)

Sec. **620.** **Restitution of weapons.** Upon reasonable request to any justice to whom any such weapon has been peaceably and quietly delivered as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards, be returned by such justice to the person from whom the same was received. *Added.* (31*a*)

Sec. **621.** **No liability in case of accidental loss.** No such justice shall be held liable to return any such weapon, or make good the value thereof, if the same, by unavoidable accident, has been actually destroyed or lost out of the possession of such justice without his lawful default. *Added.* (31*a*)

Sec. **622.** **Weapon not a pistol to be impounded.** The Court or Justice before whom any person is convicted of any offence against the provisions of sections one hundred and twenty to one hundred and twenty-four inclusive, shall impound the weapon for carrying which such person is convicted, and if the weapon is not a pistol, shall cause it to be destroyed.

(31) Taken from the R. S. C., 1886, c. 151, forming part of the Appendix to the old Criminal Code.

(31*a*) Taken from the R. S. C., 1886, c. 152, forming part of the Appendix to the old Criminal Code.

2. If the weapon is a pistol the court or Justice shall cause it to be handed over to the corporation of the municipality in which the conviction takes place, for the public uses of such corporation.

3. If the conviction takes place where there is no municipality, the pistol shall be handed over to the Lieutenant-Governor of the province in which the conviction takes place, for the public uses thereof in connection with the administration of justice therein.

Added. (32)

Sec. **623. Seizure of unlawfully manufactured or imported copper coin.** —Any two or more justices, on oath, that any copper coin has been unlawfully manufactured or imported, shall cause the same to be seized and detained, and shall summon the person in whose possession the same is found, to appear before them; and if it appears to their satisfaction, on evidence, that such copper coin has been manufactured or imported in violation of this Act, such justice shall declare the same forfeited, and shall place the same in safe keeping to await the disposal of the Governor General for the public uses of Canada.

Added. (33)

Sec. **624. Enforcing penalty.** If it appears to the satisfaction of such justices that the person in whose possession such copper or brass coin was found, knew the same to have been so unlawfully manufactured or imported, they may condemn him to pay the penalty provided by Part IX for manufacturing or importing copper coin, with costs, and may cause him to be imprisoned for a term not exceeding two months, if such penalty and costs are not forthwith paid. *Added.* (33)

Sec. **625. Recovery of penalty from owner in certain cases.** If it appears to the satisfaction of such justices that the person in whose pos-

(32) Taken from the R. S. C., 1886, c. 148, forming part of the Appendix to the old Criminal Code.

(33) Taken from the R. S. C., 1886, c. 167, forming part of the Appendix to the old Criminal Code.

session such copper coin was found was not aware of it having been so unlawfully manufactured or imported, the penalty may be recovered from the owner thereof by any person who sues for the same in any court of competent jurisdiction. *Added.* (33)

Sec. 626. **Customs officers may seize such copper coin.** Any officer of customs may seize any copper coin imported or attempted to be imported into Canada in violation of this Act, and may detain the same as forfeited, to await the disposal of the Governor General for the public uses of Canada. *Added.* (33)

Sec. 627. **Proceedings when prize fight anticipated.** If, at any time, the Sheriff of any county, place or district in Canada, any Chief of Police, any Police Officer, or any Constable, or other Peace Officer, has reason to believe that any person within his bailiwick or jurisdiction is about to engage as principal in any prize-fight within Canada, he shall forthwith arrest such person and take him before a justice, and shall forthwith make complaint in that behalf, upon oath, before such justice.

2. Such justice shall inquire into the charge and if he is satisfied that the person so brought before him was, at the time of his arrest, about to engage as a principal in a prize-fight, he shall require him to enter into a recognizance, with sufficient sureties, in a sum not exceeding five thousand dollars and not less than one thousand dollars, conditioned that he will not engage in any such fight within one year from and after the date of such arrest.

3. In default of such recognizance, the justice before whom the accused has been brought shall commit the accused to the gaol of the county, district or city within which such enquiry takes place, or if there is no common gaol there, then to the common gaol nearest to the place where such inquiry is

(33) Taken from the R. S. C., 1886, c. 167, forming part of the Appendix to the old Criminal Code.

had, there to remain until he gives such recognizance with such sureties. *Added.* (34)

Sec. 628. **Sheriff may summon posse to prevent prize-fight.** If any Sheriff has reason to believe that a prize-fight is taking place or is about to take place within his jurisdiction as such Sheriff, or that any persons are about to come into Canada at a point within his jurisdiction, from any place outside of Canada, with intent to engage in, or to be concerned in, or to attend any prize-fight within Canada, he shall forthwith summon a force of the inhabitants of his district or county sufficient for the purpose of suppressing and preventing such fight.

2. Such Sheriff shall with their aid, suppress and prevent the same, and arrest all persons present thereat, or who come into Canada as aforesaid, and shall take them before a justice, to be dealt with according to law. *Added.* (34)

Sec. 569. Sec. 629. **Information for search warrant.** Any justice who is satisfied by information upon oath in form 1, (35*a*) that there is reasonable ground for believing that there is in any building, receptacle, or place, —

(*a*) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed; or,

(*b*) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence; or,

(*c*) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant;

may at any time issue a warrant under his hand authorizing some constable or other person named therein to search

(34) Taken from R. S. C., 1886, c. 153, forming part of the Appendix to the old Criminal Code.

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such building, receptacle or place, for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice for the same territorial division to be by him dealt with according to law. (35)

Sec. 569. Sec. 630. **Execution of search warrant.** — Every search warrant shall be executed by day, unless the justice shall by the warrant authorize the constable or other person to execute it at night.

2. Every search warrant may be in form 2 or to the like effect. (35 *a*)

Sec. 569. Sec. 631. **Detention of things seized; and their restoration.** When any such thing is seized and brought before such justice he may detain it, taking reasonable care to preserve it till the conclusion of the investigation; and, if any one is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.

2. If no one is committed, the justice shall direct such thing to be restored to the person from whom it was taken, except in the cases next hereinafter mentioned, unless he is authorized or required by law to dispose of it otherwise. (35)

Sec. 569. Sec. 632. **Destruction, etc., of seized forged bank notes and seized counterfeit coin.** If under any such warrant there is brought before any justice any forged bank note, bank note-paper, instrument or other thing, the possession whereof in the absence of lawful excuse is an offence under any provision of this or any other Act, the court to which any such person is committed for trial or, if there is no commitment for trial, such justice may cause such thing to be defaced or destroyed.

2. If under any such warrant there is brought before any justice, any counterfeit coin or other thing the possession of which

(35) These 7 new sections (629-635) are taken from the old sec. 569.

(35*a*) Forms 1 and 2 are the same as Forms J and I referred to in sec. 569 of the old Code.

with knowledge of its nature and without lawful excuse is an indictable offence under any provision of Part IX., every such thing so soon as it has been produced in evidence, or so soon as it appears that it will not be required to be so produced shall forthwith be defaced or otherwise disposed of, as the justice or the court directs. (35)

See 569. Sec. **633. Seizure of explosives and their forfeiture.** Every person acting in the execution of any such warrant may seize any explosive substance which he has good cause to suspect is intended to be used for any unlawful object, — and shall, with all convenient speed, after the seizure, remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of a Superior Court to restore it to the person who claims the same.

2. Any explosive substance so seized shall, in the event of the person in whose possession the same is found, or of the owner thereof, being convicted of any offence under any provision of Part II, relating to explosive substances, be forfeited, and the same shall be destroyed or sold under the direction of the Court before which such person is convicted.

3. In the case of sale, the proceeds arising therefrom shall be paid to the Minister of Finance, for the uses of Canada. (35)

Sec. 569. Sec. **634. Offensive weapons seized under search warrant.** If offensive weapons believed to be dangerous to the public peace are seized under a search warrant the same shall be kept in safe custody in such place as the justice directs, unless the owner thereof proves, to the satisfaction of such justice, that such offensive weapons were not kept for any purpose dangerous to the public peace.

2. Any person from whom any such offensive weapons are so taken may, if the justice upon whose warrant the same are taken, upon application made for that purpose, refuses

(35) These 7 new sections (629-635) are taken from the old sec. 569.

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to restore the same, apply to a judge of a superior or county court for the restitution of such offensive weapons, upon giving ten days' previous notice of such application to such justice; and such judge shall make such order for the restitution or safe custody of such offensive weapons as upon such application appears to him to be proper. (35)

Sec. 569. Sec. 635. **Suspected goods seized under search warrant.** If goods or things by means of which it is suspected that an offence has been committed against any provision of Part VII. relating to forgery of trade marks and fraudulent marking of merchandise, are seized under a search warrant, and brought before a justice, such justice and one or more other justice or justices shall determine summarily whether the same are or are not forfeited under the said Part.

2. If the owner of any goods or things which, if the owner thereof had been convicted, would be forfeited under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the said justice may cause notice to be advertised stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be declared forfeited.

3. At such time and place the justice, unless the owner, or some person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may declare such goods or things, or any of them, forfeited. (35)

The proceedings upon which a search warrant is issued and the warrant itself may be brought before the Court on *certiorari*, and if the warrant is deemed to have been improperly issued, it may be quashed. The information necessary to justify the issuing of a search warrant must disclose facts and circumstances showing the causes of suspicion, which tended to the belief of the commission of the alleged offence, with regard to which the warrant is deemed

(35) These 7 new sections (629-635) are taken from the old sec. 569.

essential; and, where the information was, in this respect, defective, the warrant was directed to be quashed. (36)

Sec. 570. Sec. **636. Search for public stores.** *Unchanged.*

Sec. 571. Sec. **637. Search warrant for mined gold, silver, etc.** *Unchanged.* (36*a*)

Sec. 572. Sec. **638. Search for timber unlawfully detained.** *Meaning unchanged.*

Sec. 573. Sec. **639. Search for and seizure of intoxicating liquors on His Majesty's Ships.** *Unchanged.* (37)

Sec. 574. Sec. **640. Search for women in house of ill-fame.** *Unchanged.* (38)

Sec. 575. Sec. **641. Searching gaming houses, betting houses and lotteries.** If the chief constable or deputy chief constable of any city, town, incorporated village or other municipality or district, organized or unorganized, or place, or other officer authorized to act in his absence, reports in writing to any of the comsioners of police or to the mayor or chief magistrate or to the police, stipendiary or district magistrate of such city, town, incorporated village or other municipality, district or place, or to any police, stipendiary or district magistrate having jurisdiction there, or if there be no such mayor, or chief magistrate, or police, stipendiary or district magistrate, to any justice having such jurisdiction, that there are good grounds for believing, and that he does believe that any house, room or place within the said city or town, incorporated village or other municipality, district or place, is kept or used as a common gaming or betting house, as defined in sections two hundred and twenty-six and two hundred and twenty-seven, or is

(36) R. v. Kehr, 11 Ont. L. R., 517.

(36*a*) Except that, in the last clause, the provisions of Part XV of the new Act (instead of Part LVIII of the old Act), are referred to as governing appeals.

(37) Except that, in the body of the section, the reference to section 119, Part VI of the old Criminal Code, is altered to a reference to section 141 of the new Act.

(38) Except that, in the body of the section, the reference to section 185, Part XIII of the old Criminal Code, is altered to a reference to section 216 of the new Act.

used for the purpose of carrying on a lottery, or for the sale of lottery tickets, or for the purpose of conducting or carrying on any scheme, contrivance or operation for the purpose of determining the winners in any lottery contrary to the provisions of section two hundred and thirty-six, whether admission thereto is limited to those possessed of entrance keys or otherwise, such commissioner, mayor, chief magistrate, police, stipendiary or district magistrate or justice may, by order in writing, authorize the chief constable, deputy chief constable, or other officer as aforesaid, to enter any such house, room or place, with such constables as are deemed requisite by him, and if necessary to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who are found therein, and to seize, as the case may be, all tables and instruments of gaming or betting, and all moneys and securities for money, and all instruments or devices for the carrying on of such lottery, or of such scheme, contrivance or operation, and all lottery tickets, found in such house or premises, and to bring the same before the person issuing such order or any justice, to be by him dealt with according to law.

Sec. " 2. 2. The chief constable, deputy chief constable or other officer making such entry, in obedience to any such order, may, with the assistance of one or more constables, search all parts of the house, room or place which he has so entered, where he suspects that tables or instruments of gaming or betting, or any instruments or devices for the carrying on of such lottery or of such scheme, contrivance or operation, or any lottery tickets, are concealed, and all persons whom he finds in such house or premises, and seize all tables and instruments of gaming or betting, or any such instruments or devices or lottery tickets as aforesaid, which he so finds.

Sec. " 3. 3. The person issuing such order or the

justice before whom any person is taken by virtue of an order under this section, may direct any cards, dice, balls, counters, tables or other instruments of gaming or used in playing any game, or of betting, or any such instruments or devices for the carrying on of a lottery, or for the conducting or carrying on of any such scheme, contrivance or operation, or any such lottery tickets, so seized as aforesaid, to be forthwith destroyed, and any money or securities so seized shall be forfeited to the Crown for the public uses of Canada. *Slightly altered, as here set forth.*

Sec. " 4. '**Chief Constable**' defined.

Omitted here. (39)

Sec. " 5. '**Deputy Chief Constable**' defined.

Omitted here. (40)

Sec. **642. Magistrate may require any person apprehended and brought before him to be examined on oath.** The person issuing such order, or the justice before whom any person, who has been found in any house, room or place entered in pursuance of any order under the last preceding section, is taken by virtue of such order may require any such person to be examined on oath and to give evidence touching any unlawful gaming in such house, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry, into such house, room or place, or any part thereof, of any constable or officer authorized to make such entry; and any such person so required to be examined as a witness who refuses to make oath accordingly, or to answer any question, shall be subject to be dealt with in all respects as any person appearing as a witness before any justice or court in obedience to a summons or subpoena and refusing without lawful cause or excuse to be sworn or to give evidence, may, by law, be dealt with.

2. Every person so required to be examined

(39) Transferred to subsection (6) of sec. 2, p. 1, *ante*.
(40) Transferred to subsection (9) of sec. 2, p. 2, *ante*.

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as a witness, who, upon such examination, makes true disclosure, to the best of his knowledge, of all things as to which he is examined shall receive from the judge, justice, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he has become liable for anything done before that time in respect of any act of gaming regarding which he has been so examined, if such certificate states that such witness made a true disclosure in respect to all things as to which he was examined; and any action, indictment or proceedings pending or brought in any court against such witness, in respect of any act of gaming regarding which he was so examined, shall be stayed, upon the production and proof of such certificate, and upon summary application to the court in which such action, indictment or proceeding is pending, or any judge thereof, or any judge of any of the superior courts of any province. *Added.* (41)

Sec. 573. Sec. **643.** **Warrant to search for vagrants, in disorderly houses, etc.** *Unchanged.* (42)

TRIALS UNDER SPECIAL PROVISIONS.

Sec. 550. Sec. **644.** **Juveniles not to be tried publicly.** *Paragraph* 1 (*Unchanged*), *of the old sec.* 550.

The second paragraph or subsection 2 of section 550 of the old Code related to the imprisonment of young persons under sixteen and the keeping of them in custody separate from older persons. It is omitted from the new Code, and made into section 28 of the *Prisons and Reformatories Act* (R. S., 1906, c. 148).

The provisions of various Acts relating to Reformatories, Children's Homes, Industrial Schools, Houses of Refuge, etc., (includ-

(41) Taken from sections 9 and 10 of the R. S. C., 1886, c. 158.

(42) Except that, in the body of the section, the reference to Part XV of the old Criminal Code, is altered to a reference to Part V of the new Act.

ing those mentioned at pages 644-646 of the Author's second edition of the Criminal Code), are now embodied in the *Prisons and Reformatories Act* (R. S., 1906, c. 148).

Sec. 550*a*. Sec. **645. Exclusion of the public from place of trial in certain cases.** At the trial of any person charged with an offence under any of the following sections, that is to say: — Two hundred and two, two hundred and three, two hundred and four, two hundred and five, two hundred and six, two hundred and eleven, two hundred and twelve, two hundred and thirteen, two hundred and fourteen, two hundred and fifteen, two hundred and sixteen, two hundred and seventeen, two hundred and eighteen, two hundred and nineteen, two hundred and twenty, two hundred and twenty-eight in so far as it relates to common bawdy-houses, two hundred and thirty-nine in so far as it relates to paragraphs (*i*), (*j*) or (*k*) of section two hundred and thirty-eight, two hundred and ninety- two, two hundred and ninety-three, two hundred and ninety-nine, three hundred, three hundred and one, three hundred and two, three hundred and three, three hundred and four, three hundred and five, three hundred and six, three hundred and thirteen and three hundred and fourteen, or with conspiracy or attempt to commit or being an accessory after the fact to any such offence, the court or judge or justice may order that the public be excluded from the room or place in which the court is held during such trial.

2. Such order may be made in any other case also in which the court or judge or justice may be of opinion that the same will be in the interest of public morals.

3. Nothing in this section shall be construed by implication or otherwise as limiting any power heretofore possessed at common law by the presiding judge or other presiding officer of any court of excluding the general public from the court-room in any case when such judge or officer deems such exclusion necessary or expedient.

Sections 202 to 206, *ante*, relate to abominable offences, incest and acts of indecency. Sections 211 to 220, *ante*, relate to seduction and defilement of women and girls. Section 228, *ante*, relates, (among other things) to bawdy houses. Section 238, (*i*), (*j*), (*k*), *ante*, relate to prostitutes and to inmates and frequenters of bawdy houses. Sections 292 and 293, *ante*, relate to indecent assaults. Section 299, *ante*, relates to rape. Sections 301 and 302 relate to Defilement of children. Sections 303 to 306 relate to Abortion. And sections 313 and 314 relate to Abduction.

Sec. 551. **Limitations of time for commencing certain prosecutions.** *Made into sec.* 1140, *post.*

PART XIII.

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICES.

Arrest without Warrant.

Sec. 552. Sec. **646. Arrest without warrant by any person in certain cases.** Any person may arrest without warrant any one who is found committing any of the offences mentioned in sections,

(*a*) seventy-four, treason; seventy-six, accessories after the fact to treason; seventy-seven, seventy-eight and seventy-nine, treasonable offences; eighty, assaults on the King; eighty-one, inciting to mutiny;

(*b*) ninety-two, offences respecting the reading of the Riot Act; ninety-six, riotous destruction of property; ninety-seven, riotous damage to property;

(*c*) one hundred and twenty-nine, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and thirty, administering, taking or procuring the taking of other unlawful oaths;

(*d*) one hundred and thirty-seven, piracy; one hundred and thirty-eight, piratical acts; one hundred and thirty-nine, piracy with violence;

(*e*) one hundred and eighty-five, being at large while under sentence of imprison-

ment; one hundred and eighty-seven, breaking prison; one hundred and eighty-nine, escape from custody or from prison; one hundred and ninety, escape from lawful custody;

(*f*) two hundred and two, unnatural offence;

(*g*) two hundred and sixty-three, murder; two hundred and sixty-four, attempt to murder; two hundred and sixty-seven, being accessory after the fact to murder; two hundred and sixty-eight, manslaughter; two hundred and seventy, attempt to commit suicide;

(*h*) two hundred and seventy-three, wounding with intent to do bodily harm; two hundred and seventy-four, wounding; two hundred and seventy-six, stupefying in order to commit an indictable offence; two hundred and seventy-nine and two hundred and eighty, injuring or attempting to injure by explosive substances; two hundred and eighty-two, intentionally endangering persons on railways; two hundred and eighty-three, wantonly endangering persons on railways; two hundred and eighty-six, preventing escape from wreck;

(*i*) two hundred and ninety-nine, rape; three hundred, attempt to commit rape; three hundred and one, defiling children under fourteen;

(*j*) three hundred and thirteen, abduction of a woman;

(*k*) three hundred and fifty-eight, theft by agents and others; three hundred and fifty-nine, theft by clerks, servants and others; three hundred and sixty, theft by tenants and lodgers; three hundred and sixty-one, theft of testamentary instruments; three hundred and sixty-two, theft of documents of title; three hundred and sixty-three, theft of judicial or official documents; three hundred and sixty-four, three hundred and

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sixty-five and three hundred and sixty-six, theft of postal matter; three hundred and sixty-seven, theft of election documents; three hundred and sixty-eight, theft of railway tickets; three hundred and sixty-nine, theft of cattle; three hundred and seventy-one, theft of oysters; three hundred and seventy-two, theft of things fixed to buildings or land; three hundred and seventy-nine, stealing from the person; three hundred and eighty, stealing in dwelling-houses; three hundred and eighty-one, stealing by picklocks, etc.; three hundred and eighty-two, stealing from ships, docks, wharfs or quays; three hundred and eighty-three, stealing wreck; three hundred and eighty-four, stealing on railways; three hundred and eighty-eight, stealing in manufactories; three hundred and ninety-one, public servant refusing to deliver up chattels, money valuables, security, books, papers, accounts or documents; three hundred and ninety-eight, bringing stolen property into Canada;

(*l*) three hundred and ninety-nine, receiving property obtained by crime,

(*m*) four hundred and ten, personation of certain persons;

(*n*) four hundred and forty-six, aggravated robbery; four hundred and forty-seven, robbery; four hundred and forty-eight, assault with intent to rob; four hundred and forty-nine, stopping the mail; four hundred and fifty, compelling execution of documents by force; four hundred and fifty-one, sending letter demanding with menaces; four hundred and fifty-two, demanding with intent to steal; four hundred and fifty-three, extortion by certain threats;

(*o*) four hundred and fifty-five, breaking place of worship and committing an indictable offence; four hundred and fifty-

six, breaking place of worship, with intent to commit an indictable offence; four hundred and fifty-seven, burglary; four hundred and fifty-eight, house-breaking and committing an indictable offence; four hundred and fifty-nine, house-breaking with intent to commit an indictable offence; four hundred and sixty, breaking shop and committing an indictable offence; four hundred and sixty-one, breaking shop with intent to commit an indictable offence; four hundred and sixty-two, being found in a dwelling-house by night; four hundred and sixty-three, being armed, with intent to break a dwelling-house; four hundred and sixty-four, being disguised or in possession of house-breaking instruments;

(*p*) four hundred and sixty-eight, four hundred and sixty-nine and four hundred and seventy, forgery; four hundred and sixty-seven, uttering forged documents; four hundred and seventy-two, counterfeiting seals; four hundred and seventy-eight, using probate obtained by forgery or perjury; five hundred and fifty, possessing forged bank notes;

(*q*) four hundred and seventy-one, making, having or using instrument for forgery, or having or uttering forged bond or undertaking; four hundred and seventy-nine, counterfeiting stamps; four hundred and eighty, injuring or falsifying registers;

(*r*) one hundred and twelve, attempt to damage by explosives; five hundred and ten, mischief; five hundred and eleven, arson; five hundred and twelve, attempt to commit arson; five hundred and thirteen, setting fire to crops; five hundred and fourteen, attempting to set fire to crops; five hundred and seventeen, mischief on railways; five hundred and twenty, mischief to mines; five hundred

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and twenty-one, injuries to electric telegraphs, magnetic telegraphs, electric lights, telephones and fire alarms; five hundred and twenty-two, wrecking; five hundred and twenty-three, attempting to wreck; five hundred and twenty-six, interfering with marine signals;

(*s*) five hundred and fifty-two, counterfeiting gold and silver coin; five hundred and fifty-six, making instruments for coining; five hundred and fifty-eight, clipping current coin; five hundred and sixty, possessing clippings of current coin; five hundred and sixty-two, counterfeiting copper coin; five hundred and sixty-three, counterfeiting foreign gold and silver coin; five hundred and sixty-seven, uttering copper coin not current. (43)

Sec. 552. Sec. **647. Arrest by a peace officer, without warrant in the above and the following cases.** — A peace officer may arrest, without warrant, any one who has committed any of the offences mentioned in the sections in the last preceding section mentioned, or in sections, —

(*a*) four hundred and five, obtaining by false pretenses; four hundred and six, obtaining execution of valuable securities by false pretense;

(*b*) five hundred and twenty-five, injuring dams, etc., or blocking timber channel; five hundred and thirty-six, attempting to injure or poison cattle;

(*c*) five hundred and forty-two, cruelty to animals; five hundred and forty-three, keeping cock-pit;

(*d*) five hundred and fifty-five, exporting counterfeit coin; five hundred and sixty-one, possessing counterfeit current coin; five hundred and sixty-three, paragraph (*b*), bringing into Canada or

(43) These seven new sections (646-652) are taken from the old sec. 552, without any material alterations.

possessing counterfeit foreign gold or silver coin; five hundred and sixty-three, paragraph (*d*), counterfeiting foreign copper coin. (43)

Sec. 552. Sec. **648. Arrest, without warrant, of a person found committing a criminal offence.** A peace officer may arrest, without warrant, any one whom he finds committing any criminal offence.

2. Any person may arrest, without warrant, any one whom he finds committing any criminal offence by night. (43)

Sec. " Sec. **649. Arrest, without warrant, by any person on fresh pursuit.** Any one may arrest without warrant a person whom he, on reasonable and probable grounds, believes to have committed a criminal offence and to be escaping from, and to be freshly pursued by, those whom the person arresting, on reasonable and probable grounds, believes to have lawful authority to arrest such person. (43)

Sec. " Sec. **650. Arrest, without warrant, by owner of property with respect to which any person is found committing an offence.** The owner of any property on or with respect to which any person is found committing any criminal offence, or any person authorized by such owner, may arrest, without warrant, the person so found, who shall forthwith be taken before a justice to be dealt with according to law. (43)

Sec. " Sec. **651. Arrest, without warrant, by an officer in His Majesty's service.** Any officer in His Majesty's service, any warrant or petty officer in the navy, and any non-commissioned officer of marines may arrest without warrant any person found committing any of the offences mentioned in section one hundred and forty-one. (43)

Sec. " Sec. **652. Arrest, without warrant, by peace officer, of person loitering at night.** Any peace officer may, without a warrant, take into cus-

(43) These seven new sections (646-652) are taken from the old sec. 552, without any material alterations.

tody any person whom he finds lying or loitering in any highway, yard or other place during the night, and whom he has good cause to suspect of having committed or being about to commit, any indictable offence, and may detain such person until he can be brought before a justice to be dealt with according to law.

2. No person who has been so apprehended shall be detained after noon of the following day, without being brought before a justice. (43)

Sec. 553. **Magisterial jurisdiction over offences committed on or near boundary of two jurisdictions, etc.** *Made into sec. 584, ante.*

PROCEDURE. — SUMMONS OR WARRANT.

Sec. 554. Sec. **653. Cases in which justice may issue summons or warrant to compel an accused's attendance before him for preliminary enquiry.** *Unchanged.*

Sec. 555. **Offences in unorganized tracks of Ontario.** *Omitted here.* (44)

Sec. 556. **Offences in Gaspé.** *Omitted here.* (45)

Sec. 557. **Preliminary enquiry into offence committed out of justice's jurisdiction; and Procedure before justice where offence was committed.** *Omitted here.* (46)

Sec. 557*a*. **Powers of clerk of the peace in Montreal.** *Omitted here.* (47)

Sec. 558. Sec. **654. Information or Complaint.** Any one who, upon reasonable or probable grounds, believes that any person has committed an indictable offence under this Act may make a complaint or lay an information in writing and under oath before any magistrate or justice having jurisdiction to issue a warrant

(43) These seven new sections (646-652) are taken from the old sec. 552, without any material alterations.

(44) And made (except as to a large portion of par. 3 thereof) into sec. 585, *ante*.

(45) And made into sec. 588, *ante*.

(46) And made into secs. 665 and 666, *post*.

(47) And made into sec. 605, *ante*.

or summons against such accused person in respect of such offence.

2. Such complaint or information may be in form 3, or to the like effect.

Slightly altered.

Sec. 559. Sec. **655. Issuing summons or warrant after hearing and considering information or complaint.** Upon receiving any such complaint or information the justice shall hear and consider the allegations of the complainant, and if of opinion that a case for so doing is made out he shall issue a summons or warrant, as the case may be, in manner hereinafter provided.

2. Such justice shall not refuse to issue such summons or warrant, only because the alleged offence is one for which an offender may be arrested without warrant.

Slightly altered.

A sworn information merely stating that the complainant has just cause to suspect and believe and does suspect and believe that the defendant has committed the offence charged will not alone authorize a justice to issue a warrant to arrest, in the first instance. It is the duty of the justice to enquire into the facts on which the informant's belief is founded, and exercise his own judgment thereon. When the complaint is laid upon information and belief, and the causes of suspicion are not disclosed therein, the justice should examine the complainant and his witnesses *ex parte*, under oath, touching the grounds of suspicion; and the justice should grant a warrant of arrest only in case he himself entertains the like suspicion as a result of such investigation. (48)

An information and a warrant of arrest thereunder charging the accused as an accessory to the violation of a statute named, without specifying the fact as to which he is alleged to be an accessory, has, — on *habeas corpus* proceedings taken for the prisoner's discharge while in custody under a verbal remand upon a preliminary enquiry, — been held void for uncertainty, such a warrant charging no offence and neither it nor the remand thereon being validated by section 669, which provides that no irregularity or defect in the substance or form of the warrant shall affect the validity of any proceeding at or subsequent to the preliminary enquiry before the justice. (49)

(48) *Ex parte* Coffon, 11 Can. Cr. Cas., 48; 37 N. B. R., 122; *Ex p.* Boyce, 24 N. B. R., 347.

(49) R. v. Holley, 4 Can. Cr. Cas., 510.

A justice of the peace who issues a warrant of arrest without enquiring into the grounds which the complainant had to suspect the accused, becomes liable towards the latter, under the laws of the province of Quebec, when the complainant was not justified by any serious reasonable or probable ground. (50)

Where the accused found committing a criminal offence is arrested without warrant by a peace officer, and on being brought before a police magistrate a written charge not under oath is read over to him, and he thereupon consents to be tried summarily, the police magistrate has jurisdiction to try the case although no information has been laid under oath. (51)

MANDAMUS

If, when a charge is laid before a justice, there be no reasonable ground for doubting his jurisdiction or the propriety of exercising it, the justice ought to receive the information or complaint and issue the summons or warrant: and if he should refuse, he may be compelled, by *mandamus*, or, (by virtue of provincial statutes, in some of the provinces) by a rule, in the nature of a mandamus, to do so, by a Superior Court, which is invested with the prerogative right to compel inferior tribunals,— such as justices of the peace and magistrates,—to exercise the jurisdiction which they possess, and to perform any specific act which it is their legal duty to perform. (52)

A *mandamus* has been issued to justices ordering them to receive an information and complaint. (53) It has also been issued ordering justices to hear a complaint, when they have declined jurisdiction, and to *hear and determine* a case within their jurisdiction when they have improperly refused or neglected to do so; (54) and it has been held that the court has a discretion as to granting a *mandamus* to justices to issue a warrant of distress or commitment against a person summarily convicted by them. (55)

In compelling the performance of a public duty by an inferior officer or tribunal, the court will carefully consider whether the duty be of a *judicial* or of a merely *ministerial* character. If the act to be performed be of a purely ministerial kind, the court will,

(50) Murfina v. Sauvé *et al.*, 6 Can. Cr. Cas., 275.
(51) R. v. McLean, 5 Can. Cr. Cas., 67.
(52) R. v. Bexley. [1898], A. C., 210.
(53) R. v. Newton, 1 Str., 413.
(54) R. v. Brown, 26 L. J. M. C., 183; R. v. Kent, J. J., 14 East, 317, 395; R. v. Drake, 6 M. & S., 116; R. v. Rawlinson, 6 B. & C., 23.
(55) *Ex p.* Robert Thomas, 16 L. J. M. C., 57; R. v. Hants, J. J., 1 B. & Ad., 654.

by mandamus, compel the specific act to be done, as a matter of course, and in such manner as the court deems lawful. (56) But, if the duty be of a judicial character, a *mandamus* will be granted only where the judicial officer refuses to perform the duty in any way whatever,—not where he does it in one way rather than in another way. In other words, the court will only insist upon the person who is the judge acting as judge; but it will not dictate to him what his judgment should be. (57)

Before making application for a *mandamus* or for a rule in the nature of a *mandamus*, calling upon a justice or a magistrate or other inferior tribunal to hear and judicially determine a matter, care should be taken to distinguish between those cases in which the judicial officer refuses to enter upon the enquiry, through, for instance, some mistaken view, on his part, of the law upon some preliminary point, and the cases in which, after having entered upon the enquiry, the judicial officer has actually arrived at a decision upon the merits, however erroneous that decision may be. (58)

In the former case, jurisdiction is said to be declined, and the court will compel the exercise of jurisdiction; but, in the latter case, the court will not interfere. (59)

Although a justice, when he has reasonable ground for doubting his jurisdiction, will not be compelled to do an act which might subject him to an action; (60) still, if justices reject an application on the *erroneous ground* that they have no power to grant it, a Superior Court will interfere to set the jurisdiction of the justices in motion, by directing them to hear and determine upon the application. (61)

In other words, where persons exercising an inferior jurisdiction refuse, on a *mistaken* view of the law, to hear a case, they are held to *erroneously* decline to exercise their jurisdiction, and in that case they will be compelled to hear and decide it. (62)

The fact that an inferior tribunal abstains from entering upon

(56) R. v. Payn, 6 A. & E., 392.

(57) See *Remarks* of Lord Hardwicke, in R. v. Bishop of Litchfield, 7 Mod. 318, of Lord Ellenborough, in R. v. Archbishop of Canterbury, 15 East, 139, and of Littledale, J., in R. v. Middlesex, 9 A. & E., 546. *See* R. v. London, J. J., [1895], 1 Q. B., 616.

(58) R. v. Dayman, 26 L. J., M. C., 128.

(59) R. v. Breckenridge, 48 J. P., 293.

(60) R. v. Broderip, 7 D. & R., 801; R. v. Bucks., 1 B. & C., 485; Paley, 7 Ed., 244.

(61) *Per* Lord Ellenborough, in R. v. Kent, J. J., 14 East, 307.

(62) *Per* Blackburn, J., in R. v. Monmouth, L. R., 5 Q. B., 256; R. v. Durham, J. J., 19 L. T., 596; Fournier v. De Montigny, Q. J. R., 10 S. C., 292.

the merits of a case, in consequence of arriving at a wrong decision upon a preliminary point of law, is regarded as a refusal to hear; and a *mandamus* to hear and determine will be granted. (63)

A *mandamus* will be granted to a justice who, by *misconstruing* a statute, decides improperly that he has no jurisdiction, (64) or, if he refuses to act, from a *mistaken* view of his jurisdiction, amounting to a declining of it. (65)

Thus, where, on an application being made, to a magistrate, to swear and proceed upon an information and complaint, the magistrate refused to do so, *erroneously* holding,—upon a *misconstruction* of certain statutes,—that the offence charged was not indictable, and that he had no jurisdiction to hold a preliminary enquiry in respect thereof, nor even to try it summarily, it was held that a rule in the nature of a mandamus lay to compel him to proceed. (66)

The offence sought to be charged against the defendant in that case was an offence against the provisions of the Ontario Municipal Act, (which fails to impose the punishment therefor), and it was held that the case came under section 138 (now sec. 164) of the Criminal Code, which makes it an indictable offence to disobey any Act of Parliament of Canada or *of any Legislature* in Canada, by wilfully doing any act which it forbids, and which imposes a punishment of one year's imprisonment, unless some other mode of punishment is expressly provided by law.

Where a magistrate hears and considers an application and *bona fide* exercises his discretion in refusing to do an act relating to the duties of his office, — such as deciding to refuse to issue a summons for perjury upon an information setting forth facts on which in his judgment no jury would convict, — the court cannot, under these circumstances, grant a mandamus to interfere with his discretion. (67)

Where, in the exercise of a discretionary power to proceed or to refuse to proceed, a magistrate refuses to proceed, the court will not order him to do so; but, of course, in such a case, he must have *actually* and *really* exercised his discretion or judgment in the matter, and, — even if by the statute he is directed to proceed, *if he think fit*, — he must not refuse to proceed from mere caprice, or

(63) *Per* Coleridge, J., in R. v. Richards, 20 L. J. Q. B., 352.

(64) R. v. Cloete, 64 L. T., 90; R. v. Beard, 12 East, 073.

(65) R. v. Mead, 77 L. T., 462; [1898], 1 Q. B., 110; *Ex p.* Wallingford, 9 Dowl., 987.

(66) R. v. Meehan, (No. 2), 5 Can. Cr. Cas., 312.

(67) *Ex p.* Reid, 49 J. P., 600; *Ex p.* Lewis, 16 Cox C. C., 449; R. v. Cotham, [1898] 1 Q. B., 802. And see R. v. Bros, 66 J. P., 54.

from mere notions of what the law ought to be, instead of what it is. (68)

Notwithstanding the general rule that the word "may" in a statute is construed as permissive or optional, and that the word "shall" is construed as imperative, (R. S., 1906, c. 1, sec. 34, subsec. 24) still, if the subject matter shows that it must have been intented that the exercise of the power conferred by the word "may" should be imperative, it will be so. (69)

When the statute, by either of these words "may" or "shall," confers authority upon a judicial officer to do an act, whether judicial or ministerial, a duty is imposed to perform the act when the occasion for it arises, and it is applied for by a person entitled to have it done, and it is imperative. (70)

The word "may" in such cases imports the power to exercise a judicial discretion, and not a power to refuse arbitrarily. It confers authority to consider and decide,—an authority which the officer is bound to exercise. (71)

As the justice is bound to actually exercise his discretion, it has been held that,—if the evidence laid before him, in support of an application for a summons or warrant, be so strong as to induce a belief that, in refusing the application, he must have acted upon a consideration of something extraneous or extra-judicial, which ought not to have affected his decision,—this is tantamount to a declining of jurisdiction, and that a *mandamus* will, therefore, be issued ordering him to issue the summons or warrant. (72)

If, in a summary case, the magistrate refuse to hear the witnesses for the defence, and he convict, he will be ordered to re-open the case and hear such witnesses, even after the lapse of nearly a year; for the refusal to hear one side is the same as if the case had not been heard at all. (73)

But a *mandamus* will not be ordered upon the ground that the justice has improperly received or improperly rejected certain evidence, (74) nor if his decision is wrong, in law or in fact, as to

(68) R. v. Boteler and others, 33 L. J. M. C., 101; R. v. Durham, J.J., 19 L. T., 396; R. v. West Riding, J. J., 11 Q. B. D., 417; R. v. Bowman, [1898]. 1 Q. B., 663; R. v. Huggins, 60 L. J. M. C., 139.

(69) *Re* Newport, 20 L. J., M. C., 53.

(70) Cameron v. Walt, 3 Ont. A. R., 175. See Remarks of Harrison, C. J., at p. 193 of the Report.

(71) McDougall v. Patterson, 11 C. B., 755.

(72) R. v. Adamson, 1 Q. B. D., 201.

(73) *Re* Holland, 37 U. C., Q. B., 214. And see R. v. Washington, 46 U. C., Q. B., 221; R. v. Sproule, 14 O. R., 375.

(74) R. v. Yorkshire, J. J., 53 L. T., 728; R. v. Sanderson, 15 O. R., 106; R. v. Connolly, 22 O. R., 220; 12 C. L. T., 171.

whether an offence is made out, provided that he has really and *bona fide* exercised his judgment and discretion. (75)

A *mandamus* is granted to compel the performance of an act which it is the legal duty of the officer to perform and which has not been performed. It is not granted to undo what has already been done. (76)

The applicant for a *mandamus* must have the legal right to the performance of the act required to be done. (77)

It will not be granted on the application of a person who has no interest in the performance of the duty in question, nor to one who is not applying *bona fide*. (78)

And the officer's jurisdiction to do the act required to be done must be clear. (79)

The officer's obligation must amount to an absolute duty, and a *mandamus* will not be ordered to enforce a mere discretionary power not amounting to an absolute duty. (80)

A power given for the furtherance of justice, or when the thing to be done is for the public benefit, or in the advancement of public interest, is given to be exercised, and is a command. (81)

A *mandamus* will be granted at any stage of the proceedings, if the justices illegally decline to proceed. (82)

So that, if, after the hearing of a case, the justices refuse to give judgment, a *mandamus* will lie. (83)

If there is some other specific remedy equally convenient and adequate, such as an appeal from the justice,—if the appeal be as adequate a remedy,—a *mandamus* will not, as a rule, be granted. (84)

But, even where there is another remedy, a *mandamus* will be granted, if the other remedy is not equally advantageous; (85) or

(75) R. v. Byrde, 60 L. J. M. C., 19; R. v. Shiel, 49 J. P., 68.

(76) *Ex p.* Nash, 62 L. J. Q. B., 572; 15 Q. B., 92; R. v. Bexley, [1898]. A. C., 210.

(77) *Ex p.* Napier, 18 Q. B., 695; R. v. Hertford, 3 Q. B. D., 701; R. v. Peterborough, 44 L. J. Q. B., 85; R. v. Lewisham, [1897], 1 Q. B., 498; Peebles v. Oswaldwisle, [1897]. 1 Q. B., 625.

(78) R. v. Liverpool Ry. Co., 21 L. J. Q. B., 284.

(79) Pearson v. Glazebrook, L. R., 3 Ex., 27; Trainor v. Holcombe, 7 U. C. Q. B., 548.

(80) R. v. Bishop of Oxford, 4 Q. B. D., 553.

(81) *Ib.*

(82) R. v. Brown, 7 E. & B., 757.

(83) La Certe v. Pepin, Q. J. R., 10 S. C., 542.

(84) R. v. Joint Stock Companies' Registrar, 21 Q. B. D., 131; *Re* Marter & Gravenhurst, 18 O. R., 243; R. v. Mayor of Hastings, [1898], 1 Q. B., 40.

(85) R. v. Leicester, [1899], 2 Q. B., 632.

if the alternate remedy be doubtful, or, if granting it would work an injustice. (86)

So, that, where a right of appeal was given by statute, it was held that, as the right of appeal was not so adequate a remedy as a *mandamus*, a *mandamus* ought to issue. (87)

The court will be vigilant to apply the remedy by *mandamus*, where it is reasonably applicable (88)

The order for a *mandamus* is applied for by motion or petition to a judge in chambers, (89) and may be appealed from to the court itself. (90)

It has been held that an appeal to the Supreme Court of Canada, in cases of *mandamus*, is restricted to decisions of the "highest court of final resort" in a province, and that an appeal to the Supreme Court will not lie from any court in the Province of Quebec, except the Court of King's Bench. (91)

It has been held, in an Ontario case, that an application for a *mandamus* against a magistrate is a civil and not a criminal proceeding, although the act which it is proposed that the magistrate shall be ordered to do so is the taking of an information for an offence against the criminal law. (92)

And it has been usual, in the province of Quebec, to apply to the Superior Court, (a court exercising civil jurisdiction), for a writ of *mandamus*, in all matters, both civil and criminal; (93) and, in the course of such applications, reference is generally made to Article 992 of the Quebec Code of Civil Procedure, which provides that, "If there is no other remedy equally sufficient, beneficial and effectual, a *mandamus* lies to enforce the performance of an act or duty, whenever any public officer, *etc.*, or any *court of inferior jurisdiction*, omits, neglects, or refuses to perform any duty belonging to such office or any act which by law he is bound to perform."

But does this authorize the Superior Court, exercising civil jurisdiction, to issue to a justice, or a magistrate, or a court of inferior jurisdiction, a writ of *mandamus*, in a criminal matter, as well as in a civil matter?

If so, and if an application for a *mandamus* in a criminal mat-

(86) R. v. Garland, L. R., 5 Q. B., 269.

(87) R. v. Stepney Borough Council, [1902], 1 K. B., 317; 71 L. J. K. B., 238.

(88) Rochester (Mayor of) v. R., 27 L. J. Q. B., 438.

(89) Kingston v. Kingston, 28 O. R., 399; 25 Ont. A. R., 462; Smith v. Chorley, [1897], 1 Q. B., 532.

(90) R. v. Cushing, 26 Ont. A. R., 248.

(91) Dunjou v. Marquis, 3 S. C. R., 251.

(92) R. v. Meehan, (No. 1), 5 Can. Cr. Cas., 307.

(93) *See* Thompson v. Desnoyers, 3 Can. Cr. Cas., 68.

ter is a civil and not a criminal proceeding, what jurisdiction, with regard to writs of *mandamus*, in criminal matters, is possessed by our Superior Courts of Criminal Jurisdiction, — as defined by section 2(*35*) of the Criminal Code? And how are we to apply the provisions of section 573 of the Criminal Code, which provides that every Superior Court of Criminal Jurisdiction may make rules of court, (*b*) for regulating, in criminal matters, the pleading, practice and procedure in court, including the subjects of *mandamus, certiorari, habeas corpus, prohibition, quo warranto, etc.?*

In the province of Quebec, there has been a comparatively recent decision; — (based, in the Author's opinion, upon a correct view of this question), — to the effect that a Superior Court of civil jurisdiction does not exercise any control over inferior courts in respect of criminal matters within the legislative authority of the Dominion Parliament, and has no power to quash, by way of *certiorari*, decisions rendered by magistrates sitting for the summary trial of indictable offences, that the review of such decisions, in so far as they are reviewable, belongs exclusively, in the province of Quebec, to the Court of King's Bench, and that the Federal Parliament has the exclusive right to declare before what court, existing in each province and exercising criminal jurisdiction, proceedings in criminal cases, — including proceedings by *certiorari* after conviction, — shall be carried on. (93*a*)

For Forms of **Notice of Motion for Mandamus**, of **Affidavit**, of **Writ of Mandamus** and of **Return thereto**, see Crankshaw's Practical Guide to Magistrates, 2nd Edit., pp. 45-48.

Sec. 560. Sec. **656. Warrant in case of an offence committed on the high seas.** *Unchanged.* (94)

Sec. 561. Sec. **657. Arrest of suspected deserter.** *Meaning unchanged.*

Sec. 562. Sec. **658. Contents of summons. — Service.** *Unchanged.* (95)

Sec. 563. Sec. **659. Warrant for apprehension of person informed of or complained against.** — The warrant issued by a justice for the apprehension of the person against whom an information or complaint has been laid as provided in section six hundred and fifty-four may be in form 6, or to the like effect.

(93*a*) R. v. Marquis, 8 Can. Cr. Cas., 346.

(94) Except that the form of warrant is now form 4.

(95) Except that the section is now divided into 5 paragraphs, and the form of summons is now form 5.

2. No such warrant shall be signed in blank. (96)

Sec. 563. Sec. 660. **Formalities of warrant.** — Every warrant shall be under the hand and seal of the justice issuing the same, and may be directed, either to any constable by name, or to such constable and all other constables within the territorial jurisdiction of the justice issuing it, or generally to all constables within such jurisdiction.

2. The warrant shall state shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the officer or officers to whom it is directed to apprehend the offender and bring him before the justice or justices issuing the warrant, or before some other justice or justices to answer the charge contained in the information or complaint, and to be further dealt with according to law.

3. It shall not be necessary to make such warrant returnable at any particular time, but the same shall remain in force until it is executed.

4. The fact that a summons has been issued shall not prevent any justice from issuing a warrant at any time before or after the time mentioned in the summons for the appearance of the accused.

5. In case the service of the summons has been proved and the accused does not appear, or when it appears that the summons cannot be served, a warrant in the form 7 may issue. (96)

Sec. 564. Sec. 661. **Execution of warrant.** *Unchanged.*

Sec. 565. Sec. 662. **Endorsement of warrant when offender not found within justice's jurisdiction.** *Unchanged.* (97)

Sec. 566. Sec. 663. **Procedure or arrest under endorsed warrant.** *Unchanged.*

A person summoned, but not arrested, for trespassing on a rail-

(96) The old sec. 563 is made into these two new sections (659 and 660).

(97) Except that the section is divided into 3 paragraphs, and the form of endorsement of warrant is now form 8.

way track, is not liable to be tried elsewhere than in the local jurisdiction wherein the offence was committed. (98)

Sec. 567. Sec. **664. Procedure in other cases of arrest on a warrant.** *Unchanged.*

Sec. 557. Sec. **665. Before whom preliminary enquiry held when offence committed out of justices' jurisdiction.** — The preliminary inquiry may be held either by one justice or by more justices than one.

2. If the accused person is brought before any justice charged with an offence committed out of the limits of the jurisdiction of such justice, such justice may, after hearing both sides, order the accused at any stage of the inquiry to be taken by a constable before some justice having jurisdiction in the place where the offence was committed.

3. The justice so ordering shall give a warrant, for that purpose to a constable which may be in form 9, or to the like effect, and shall deliver to such constable the information, depositions and recognizances, if any, taken under the provisions of this Act, to be delivered to the justice before whom the accused person is to be taken and such depositions and recognizances shall be treated to all intents as if they had been taken by the last-mentioned justice. (99)

Sec. " Sec. **666. Procedure before justice having jurisdiction where offence committed.** — Upon the constable delivering to the justice the warrant, information, if any, depositions and recognizances, and proving on oath or affirmation, the handwriting of the justice who has subscribed the same, such justice, before whom the accused is produced, shall thereupon furnish such constable with a receipt or certificate in form 10, of his having received from him the body of the accused, together with the warrant, information, if any, depositions and recognizances, and of

(98) R. v. Hughes, 2 Can. Cr. Cas., 332.

(99) The old sec. 557 is made into these two new sections (665 and 666).

his having proved to him, upon oath or affirmation, the handwriting of the justice who issued the warrant.

2. If such justice does not commit the accused for trial, or hold him to bail, the recognizances taken before the first mentioned justice shall be void. (99)

The power conferred on a magistrate under section 665 of ordering the accused person brought before him, charged with an offence committed out of his territorial jurisdiction to be taken before some justice having jurisdiction in the place where the offence was committed, is permissive only. A magistrate may hold a preliminary enquiry in respect of an indictable offence committed in the same province outside of his territorial jurisdiction if the accused is or is suspected to be within the limits over which such magistrate has jurisdiction; or resides or is suspected to reside within such limits. (100)

Sec. 568. Sec. **667. Coroner's Inquisition.** *Meaning unchanged.*

A Coroner's court is a court of record, and the coroner is a judge of a court of record. A coroner has power to himself summon the coroner's jury by a mere verbal direction to the jurors. A post mortem examination may be directed by the coroner, and proceeded with under such direction, before the empanelling of the jury. (101)

PART XIV.

PROCEDURE ON APPEARANCE OF ACCUSED BEFORE JUSTICE.

Jurisdiction.

Sec. 577. Sec. **668. Enquiry by justice, in manner hereinafter directed.** *Meaning unchanged.*

Sec. 578. Sec. **669. Irregularity in summons or warrant or variance between charge therein and charge in information not to affect validity.** *Unchanged.*

Sec. 579. Sec. **670. Adjournment in case of variance.** *Unchanged.*

The Court will not, upon *habeas corpus* proceedings, enter into an enquiry, as to whether the prisoner brought before a justice

(99) The old sec. 557 is made into these two new sections (905 and 666).

(100) R. v. Burke, 5 Can. Cr. Cas., 29.

(101) Davidson v. Garrett, 5 Can. Cr. Cas., 200.

and remanded by him, for an offence committed in Canada, was arrested in the United States and brought back to Canada without an extradition warrant. (102)

The defendant, having been arrested and brought before a police magistrate charged with conspiracy, objected to the sufficiency of the charge and asked for particulars of the deceit, etc., charged, together with dates and names. The magistrate overruled the objection and refused the particulars, on the ground that the proceeding before him was merely an investigation, whereupon the defendant applied for prohibition, which was refused, on the ground that a writ of prohibition will not lie unless there is a lack of jurisdiction in the judicial officer or court dealing with the proceedings sought to be prohibited. (103)

Sec. 579. Sec. **670. Adjournment in case of variance.**

Unchanged.

PROCURING ATTENDANCE OF WITNESSES.

Sec. 580. Sec. **671. Summons for a witness.** — If it appears to the justice that any person being or residing in the province is likely to give material evidence either for the prosecution or for the accused on such inquiry he may issue a a summons under his hand, requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge, and to bring with him any documents in his possession or under his control relating thereto.

2. Such summons may be in form 11, or to the like effect. *Slightly altered.*

Sec. 581. Sec. **672. Service of summons for witness.**

Unchanged.

Sec. 582. Sec. **673. Warrant for witness after summons.** — If any one to whom such last mentioned summons is directed does not appear at the time and place appointed thereby, and no just excuse is offered for such non-appearance, then, after proof upon oath that such summons has been served as aforesaid, or that the person to whom the summons is directed is keeping out of the way to avoid service the justice

(102) R. v. Walton, 10 Can. Cr. Cas., 269.
(103) R. v. Phillips, 11 Ont. L. R., 478.

before whom such person ought to have appeared if satisfied by proof on oath that such person is likely to give material evidence, may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other justice in order to testify as aforesaid.

2. The warrant may be in form 12, or to the like effect.

3. Such warrant may be executed anywhere within the territorial jurisdiction of the justice by whom it is issued, or, if necessary, endorsed as provided in section six hundred and sixty-two and executed anywhere in the province out of such jurisdiction. (104)

Sec. 582. Sec. **674. Procedure against defaulting witness.** — If a person summoned as a witness under the provisions of this Part is brought before a justice on a warrant issued in consequence of refusal to obey the summons, such person may be detained on such warrant before the justice who issued the summons, or before any other justice in and for the same territorial division who shall then be there, or in the common gaol, or any other place of confinement, or in the custody of the person having him in charge, with a view to secure his presence as a witness on the day fixed for the trial, or, in the discretion of the justice, released on recognizance, with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer as for contempt for his default in not attending upon the said summons.

2. The justice may, in a summary manner, examine into and dispose of the charge of contempt against such person, who, if found guilty, shall be liable to a fine not exceeding twenty dollars, or to imprisonment in the common gaol, without hard labour,

(104) The old sec., 582, is made into these two new sections 673 and 674.

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	for a term not exceeding one month, or to both such fine and imprisonment, and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody. 3. The conviction under this section may be in form 13. (104)	
Sec. 583.	Sec. **675. Warrant for witness in first instance.**	*Meaning unchanged.* (105)
Sec. 584.	Sec. **676. Procuring attendance of witnesses beyond the province.**	*Unchanged.* (106)
Sec. "	Sec. **677. Warrant for defaulting witness.** — If the person served with a subpœna as provided by the last preceding section, does not appear at the time and place specified therein, and no just excuse is offered for his non-appearance, the justice holding the inquiry, after proof upon oath, that the subpœna has been served, may issue a warrant under his hand directed to any constable or peace officer in the district, county or place where such person is, or to all constables or peace officers in such district, county or place, directing him, them or any of them to arrest such person and bring him before the said justice or any other justice at a time and place mentioned in such warrant in order to testify as aforesaid. The warrant may be in the form 15. or to the like effect ; and if necessary, may be endorsed in the manner provided by section two hundred and sixty-two, and executed in a district, county or place other than the one therein mentioned. (106)	

(104) The old sec. 582, is made into these two new sections 673 and 674.

(105) The reference therein, — as to endorsement of a warrant, — is to section 662, *ante;* and the form of warrant for a witness in the first instance is form 14.

(106) The old sec. 584 is made with these two new sections 676 and 677.

HEARING AND CONNECTED PROCEDURE.

Sec. 585. Sec. **678. Commitment of witness refusing to be examined, etc.** *Unchanged.* (107)

To justify a magistrate in committing a witness under this section for refusing to answer a question put to him upon a preliminary enquiry, it must appear not only that the witness refused, without just excuse, to answer, but that the question asked was in some way relevant to the charge. (108)

Sec. 586. Sec. **679. Preliminary enquiry. — Powers of the justice.** — A justice holding a preliminary inquiry may in his discretion,—

(*a*) permit or refuse permission to the prosecutor, his counsel or attorney, to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused;

(b) receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused;

(*c*) adjourn the hearing of the matter from time to time, and change the place of hearing, if from the absence of witnesses, the inability of a witness who is ill to attend at the place where the justice usually sits, or from any other reasonable cause, it appears desirable to do so, and may remand the accused, if required, by warrant in form 17: Provided that no such remand shall be for more than eight clear days, the day following that on which the remand is made being counted as the first day;

(*d*) order that no person other than the prosecutor and accused their counsel and solicitors shall have access to or remain in the room or building in which the enquiry is held, if it appears to him that the ends of justice will be best answered by so doing;

(*e*) regulate the course of the enquiry in

(107) The warrant of commitment of a witness is now form 16.
(108) *Re* Ayotte, 9 Can. Cr. Cas., 133.

any way which may appear to him desirable, and which is not inconsistent with the provisions of this Act.

2. If any remand under this section is for a time not exceeding three clear days the justice may verbally order the constable or other person in whose custody the accused then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody and to bring him before him or such other justice as shall then be acting at the time appointed for continuing the examination.

Slightly altered as here set forth.

It is essential, when there is a remand, that the accused be present before the magistrate. A remand for eight days, for the purpose of a medical examination as to the sanity of the accused, cannot be made on the mere suggestion of the police officer in charge of the accused, and without the accused being personally brought before the magistrate. Thus, where a woman arrested (under a warrant) on a charge of having threatened to kill her sister, was, by the magistrate, (without being brought before him) committed to gaol for medical examination as to her sanity, there being a mere verbal statement that, upon her arrest, she had shown signs of insanity, the commitment was held illegal. The first duty of the magistrate, dealing with a prisoner arrested upon his warrant, is to have such person brought before him, as soon as practicable, and to then make such order as the case may require. (109)

A justice of the peace holding a preliminary enquiry has not only the power, — as provided by clause (*d*) of the above section, 679, — to exclude all persons other than the parties and their counsel or solicitors, if he considers that the ends of justice will be best answered by so doing: but he has the right to order the removal and exclusion of persons who, by their disorderly conduct, obstruct or interfere with the proceedings; and he may even exclude the counsel or solicitor for gross contempt or improper conduct, if the proceedings are thereby obstructed. (110) But, in such an event as this, the case should be adjourned, so as to afford the party an opportunity of obtaining other counsel.

See pp. 121-124, *ante*, for further comments on this subject and on the general powers of magistrates to preserve order in Court and to commit for contempt.

(109) *Ex p.* Sarrault, Que. Off. Rep., 15 K. B., 3; 9 Can. Cr. Cas., 448. And see R. v. Holley, 4 Can. Cr. Cas., 510.

(110) Young v. Saylor, 23 O. R., 513; 20 Ont. A. R., 645; Colter v. Hicks, 2 B. & Ald., 663.

A preliminary enquiry commenced before one magistrate cannot be continued before another. But, if the magistrate, who begins the hearing, should die or be dismissed, or withdraw from the hearing, another competent magistrate may take it up, but he should begin the hearing *de novo* before himself. A magistrate, — who had begun a preliminary enquiry, and, without having concluded it, obtained leave of absence and started on a voyage for Europe, — was deemed to be withdrawn from the proceeding: and, in such a case, with the consent of the Crown, the party, prevented from proceeding, was entitled to obtain, from the magistrate who replaced the absent one, an order for beginning *de novo* the enquiry; and, in such a case, a writ of *certiorari* will not be granted to prevent the new magistrate from taking up the case and beginning it again. (111)

Sec. 588. Sec. **680.** **Hearing may be resumed before the expiration of the time of remand.** *Unchanged.*

Sec. 587. Sec. **681.** **Bail on Remand.** — If the accused is remanded as aforesaid, the justice may discharge him, upon his entering into a recognisance in form 18, with or without sureties in the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination. *Unchanged in the meaning*

Sec. 590. Sec. **682.** **Evidence for prosecution at preliminary enquiry.** — When the accused is before a justice holding an inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution.

2. The evidence of the said witnesses shall be given upon oath and in the presence of the accused; and the accused, his counsel or solicitor, shall be entitled to cross-examine them.

3. The evidence of each witness shall be taken down in writing in the form of a deposition, which may be in form 19, or to the like effect.

4. Such deposition shall in the presence of the accused, and of the justice, at some time before the accused is called on for his defence, be read over to and signed by the witness and the justice.

5. The signature of the justice may either

(111) Bertrand v. Angers, Que. Off. Rep., 21 S. C., 213.

be at the end of the deposition of each witness, or at the end of several or of all the depositions in such a form as to show that the signature is meant to authenticate each separate deposition. *Changed as here set fort.*

Sec. 590. Sec. **683. Depositions may be taken in shorthand.** — Every justice holding a preliminary enquiry shall cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written: Provided that the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice and who before acting shall make oath that he shall truly and faithfully report the evidence.

2. Where evidence is so taken, it shall not be necessary that such evidence be read over to or signed by the witness, but it shall be sufficient if the transcript be signed by the justice and be accompanied by an affidavit of the stenographer that it is a true report of the evidence.

The above section, 682, expressly provides that the accused, his counsel, or solicitor shall be entitled to cross-examine the witnesses for the prosecution; and thereby, as well as by section 679, *ante*, the right of the defendant to be represented, at the preliminary investigation, by his counsel or solicitor, is expressly recognized.

A defendant charged with the commission of an indictable offence is not to be called upon to plead; but the case is to be substantiated against him, in the first instance; for, with the exception of the cases provided for by Parts XVI, XVII and XVIII, *post*, justices have no power, in indictable offences, to deal with the accused, summarily, even though he openly admit his guilt.

The manner of taking the depositions varies: In some places it is usual to take down the evidence in the form of a deposition, at once; in others, abbreviated notes are taken of the examination, copied *verbatim*, and afterwards read over to the witnesses in the presence of the accused, the latter having every opportunity of cross-examination and of making objections. The former of these two modes is the more correct: but the latter has been approved, and depositions so taken have been held admissible. (111*a*) If the latter plan is adopted, the depositions should be merely a plain

(111*a*) R. v. Bates, 2 F. & F., 317.

copy of the notes; and the clerk should not, in the absence of the magistrate, ask the witnesses any questions to complete the depositions; (112) even though the accused be present at the time. (113)

The evidence must be taken down as nearly as possible in the witness' own words, and the deposition should contain the cross-examination and re-examination as well as the examination in chief; and any interruption or observation which may be made by the accused should also be taken down. It may be evidence against him. (114) But it should be made to appear, upon the depositions, under what circumstances the observation was made. (115)

The witnesses must be before the magistrate when testifying, and the latter must see and hear them giving their evidence. Where, on a preliminary enquiry, the witnesses were sworn by the magistrate and then taken into another room and their evidence in chief taken down by a stenographer out of the presence and hearing of the magistrate, such depositions were held to be illegally taken, although the prisoner's counsel had the opportunity of afterwards cross-examining the witnesses before the magistrate. (116)

Where the cross-examination of a witness for the prosecution upon a preliminary enquiry is interrupted by the witness' illness, and, afterwards, the magistrate, in the absence of the accused and of his counsel, obtains the witness' signature to the deposition, neither the witness nor the prisoner's counsel re-attending the enquiry to complete the cross-examination, there has been no full opportunity to cross-examine so as to admit such deposition in evidence at the trial, upon proof of the continued illness of the witness. There was no waiver of the right to continue the cross-examination, by the failure of the prisoner's counsel to attend on the adjourned enquiry, when the witness was not present, nor by the prisoner himself stating that he had nothing to say. A magistrate should not obtain a witness' signature to a deposition in the absence of the accused. (117)

The manner generally adopted in British Columbia, of swearing a Chinese witness who is not a Christian, is by writing his name on a piece of paper and burning it, at the same time declaring that he would tell the truth; the consumption of the paper by fire signifying the fate of his soul if he should fail to do so. But, when the trial is for a capital offence, the King's Oath or Chicken Oath,

(112) R. v. Christopher, 14 J. P., 83; 19 L. J. M. C., 103.
(113) R. v. Watts, 33 L. J. M. C., 63.
(114) R. v. Stripp, 25 L. J. M. C., 100.
(115) See R. v. Jarvis, 37 L. J. M. C., 1.
(116) R. v. Traynor, 4 Can. Cr. Cas., 410.
(117) R. v. Trevane, 6 Can. Cr. Cas., 124.

—(consisting in the cutting off of the head of a live cock or other fowl),—is administered, instead of the less solemn "paper oath." (118)

The administering of the Chinese "paper oath," to a Chinese witness, at his own suggestion, obligates him to give his evidence truthfully, under the like penalty for perjury as if the witness had affirmed or had been sworn, according to a form of oath recognized by Chinamen as more binding upon the conscience. (119)

It has been held that section 684 (now sec. 1002) of the Code does not forbid an accused's *committal for trial* upon the uncorroborated evidence of one witness, but that it enacts that he shall not be *convicted* thereon. (120)

Evidence taken under a commission is admissible not only before the Grand Jury and at the trial of the indictment when found, but also at the preliminary enquiry. (121)

Ordering Witnesses Out of Court.—On the application of either of the parties, an order will, as a general rule, be given for all witnesses except the one under examination, to leave the court. This order may be applied for at any stage of the enquiry, and it is rarely withheld; (122) although the authorities are somewhat conflicting as to whether it can be demanded of strict right, especially with regard to a prisoner. (123)

If any of the witnesses remain in court after an order has been made to withdraw, the justices will have no right to exclude their testimony, however much the witness' wilful disobedience of the order may lessen the value of his evidence. (124)

With regard to ordering witnesses out of court, an exception is made in favor of medical witnesses when their evidence is merely as to medical facts.

Sec. 591. Sec. **684. Evidence for prosecution to be read to accused, and address to be made to him by the justice.** After the examination of the witnesses produced on the part of the prosecution has been completed, and after the depositions have been signed as aforesaid, the justice unless he discharges the accused per-

(118) *See* R. v. Ah Wooey, 8 Can. Cr. Cas., 25, for a full description of the ceremony of administering the Chinese Oath.

(119) R. v. Lai Ping, 8 Can. Cr. Cas., 467.

(120) *In re* Lazier, 30 O. R., 419.

(121) R. v. Venot, 6 Can. Cr. Cas., 471.

(122) Southey v. Nash, 7 C. & P., 632.

(123) Stark. Ev., 162; 2 Tayl. Ev., 8 Ed., sec. 1400; R. v. Cook, 13 How. St. Tr., 348; R. v. Vaughan, *Ib.*, 494.

(124) Chandler v. Horne, 2 M. & Rob., 423; Cobbett v. Hudson, 22 L. J. Q. B., 13.

son, shall ask him whether he wishes the depositions to be read again, and unless the accused dispenses therewith shall read or cause them to be read again.

2. When the depositions have been again read, or the reading dispensed with, the accused shall be addressed by the justice in these words, or to the like effect:

'Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial notwithstanding such promise or threat,

3. Whatever the accused then says in answer thereto shall be taken down in writing in form 20, or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter provided. *Slightly altered.*

It is proper for the magistrate to ask the accused to sign the statement made by him under this section, even where his answer to the statutory question is merely, "I have nothing to say;" and it has been held that, the accused's signature to such statement may afterwards,—upon the trial of the charge of forgery upon which he was committed,—be used against him for purposes of comparison of the handwriting with the alleged forgery. (125)

The preliminary enquiry before the magistrate of an offence punishable an indictment, is not, properly speaking, the enquete of the informant, but that of the magistrate; and if, on the preliminary hearing, the enquete has been declared closed and no evidence offered on the part of the accused, the magistrate may, in his discretion, and even after argument on questions of law arising from the evidence given, allow the informant to re-open the enquete and adduce further evidence. (126)

(125) R. v. Golden, 11 B. C. R., 340; 10 Can. Cr. Cas., 279.
(126) Belanger v. Mulvena, Que. Off. Rep., 22 S. C., 37.

Sec. 592. Sec. **685. Evidence of admission or confession.**

Unchanged.

The onus of proving that an alleged confession was a free and voluntary one is upon the Crown. (127)

An inducement held out to an accused person, in consequence of which he makes a confession must be one having relation to the charge against him, and must be held out by a person in authority, in order to render evidence of the confession inadmissible. (128)

A "person in authority" means, generally speaking, anyone who has authority or control over the accused or over the proceedings or the prosecution against him. (129)

The reason that confessions, made as a result of inducements held out by persons in authority, are inadmissible is that the authority which the accused knows such persons to possess are supposed, in the majority of instances, both to animate his hopes of favor, on the one hand, and to inspire him, on the other hand, with awe, and so in some degree to overcome the powers of his mind. (130)

If, however, it appears that the alleged confession was made under circumstances in which the accused could not have known or supposed that the person to whom the admission was made was a *person in authority,* then the evidence of the admission is admissable. (131)

The rector of a cathedral is a person in authority over the choir boys with respect to the investigation of an alleged assault committed by them while on the way to a meeting of the choir; and answers of a choir boy elicited by the rector and the choir master upon such investigation and stated to be only for the purpose of that enquiry, are not admissible in evidence against the choir boy afterwards prosecuted for the assault,—without proof that the statements of the boy were made voluntarily. The onus of proving that the alleged confession was a voluntary one is upon the Crown. (132)

A confession, preceded by a statement from a person in authority, will,—notwithstanding that the statement may have operated as an inducement to make the confession,—be admissible in evidence, if, after the inducing statement and before the confession itself, the person making the confession was duly cautioned by the magistrate who received it. (133)

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(127) R. v. Royds, 10 B. C. R., 407; R. v. Kay, 11 B. C. R., 157; R. v. Tutty, 38 N. S. R., 136.
(128) R. v. Todd, 4 Can. Cr. Cas., 514.
(129) *Ib.*
(130) Greenleaf on Evid., sec. 222.
(131) R. v. Todd, *supra.*
(132) R. v. Royds, 8 Can. Cr. Cas., 200; 10 B. C. R., 407.
(133) R. v. Lai Ping, 8 Can. Cr. Cas., 467.

There is a distinction between a confession obtained before and a confession made after arrest. The arrest itself constitutes an inducement or pressure upon the accused to speak; and, in order to satisfy the onus resting upon the Crown of proving that a confession, made in answer to questions put by a constable to the prisoner, was voluntary, it must be shewn that the accused was warned that what he said might be used against him. And so it was held that a confession, made by a person, under arrest, for theft, in answer to questions put to him by a police officer, without any warning to the prisoner, is not admissible against him, upon a charge of murder subsequently preferred. (134)

The proper mode of proving that the prisoner's statement was voluntarily made is by negativing the possible inducements by way of hope or fear that would have made the statement inadmissible, and not by merely taking the affirmative answer of the officer under oath that the statement was made voluntarily. (135)

A prisoner's admission to a Crown officer while in custody is not admissible in evidence, if it appears that an admission was suggested to the prisoner by a peace officer with inducements which would make an admission to him inadmissible, and was shortly afterwards made to the Crown officer as a result of such inducement. (136)

DYING DECLARATIONS

Proof of a dying declaration in a homicide case must be restricted to the transaction from which the death ensued but may include all facts immediately connected therewith, and a statement of the circumstances which immediately preceded the fatal injury.

A dying declaration is admissible in evidence either for the prosecution or for the prisoner in a homicide case.

To admit a dying declaration in a homicide case it is requisite that the declarant must have been not only in actual danger of death, but must have had a sense or conviction that his death was impending. (137)

A dying declaration made by a person who cannot speak the language of the country, and which is proved only through an interpreter, is admissible, if shewn to contain the actual purport of the statement made, without proof being necessary of the exact language of the declarant. (138)

(134) R. v. Kay, 9 Can. Cr. Cas., 403; 11 B. C. R., 157.
(135) R. v. Tutty, 9 Can. Cr. Cas., 544; 38 N. S. R., 136.
(136) R. v. Hope Young, 10 Can. Cr. Cas., 466; 38 N. S. R., 427.
(137) R. v. Laurin, (No. 1), 5 Can. Cr. Cas., 324; R. v. Laurin, (No. 4), 6 Can. Cr. Cas., 104.
(138) R. v. Loule, 7 Can. Cr. Cas., 347; 11 B. C. R., 1.

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Sec. 593. Sec. **686. Evidence for the defence.** After the proceedings required by section 684 are completed, the accused shall be asked if he wishes to call any witnesses.

2. Every witness called by the accused who testifies to any fact relevant to the case shall be heard, and his deposition shall be taken in the same manner as the depositions of the witnesses for the prosecution.

Slightly altered.

ADJUDICATION AND SUBSEQUENT STEPS AND BAIL.

Sec. 594. Sec. **687. Discharge of accused, if no sufficient case made out.** *Unchanged.*

A person discharged by a justice on a preliminary enquiry for an indictable offence may be summoned again upon a fresh information for the same offence; and, if the accused is committed for trial at the second preliminary enquiry, the depositions on the first, when he was discharged, need not be transmitted to the trial court. (139)

Sec. 595. Sec. **688. Prosecutor may have himself bound over to prosecute.** If the justice discharges the accused, and the person preferring the charge desires to prefer an indictment respecting the said charge, he may require the justice to bind him over to prefer and prosecute such an indictment, and thereupon the justice shall take his recognizance to prefer and prosecute an indictment against the accused before the court by which such accused would be tried if such justice had committed him, and the justice shall deal with the recognizance, information and depositions in the same way as if he had committed the accused for trial.

2. Such recognizance may be in form 21, or to the like effect. (140)

Sec. 595. Sec. **689. Costs in such case; and securily therefor.** If the prosecutor so bound over at his own request does not prefer and prosecute such an indictment, or if the grand jury does not find a true bill, or if the accused is not convicted upon the indictment so preferred, the

(139) R. v. Hannay, 11 Can. Cr. Cas., 23.

(140) The old sec. 595 is made into these two sections 688 and 689.

prosecutor shall, if the court so direct, pay to the accused person his costs, including the costs of his appearance on the preliminary inquiry.

2. The court before which the indictment is to be tried or a judge thereof may in its or his discretion order that the prosecutor shall not be permitted to prefer any such indictment until he has given security for such costs to the satisfaction of such court or judge. (140)

The taxation of costs against an unsuccessful private prosecutor who, at his own request, has been bound over to prefer an indictment is controlled by section 1047 *post.* and the scale of costs in the absence of a tariff for criminal proceedings is the lowest scale in civil suits in the court in which the indictment is tried. (141)

Sec. 596. Sec. **690.** Committal of accused for trial.

Unchanged. (142)

A magistrate who holds the preliminary enquiry on a charge preferred against an accused, may commit him for trial on any other charge or charges disclosed by the evidence. (143)

A magistrate holding a preliminary enquiry, for an indictable offence, cannot, — upon the evidence adduced on both sides at such enquiry, — proceed to summarily convict for a lessor offence, included in the offence charged, although such lesser offence, if originally charged, would have been within his jurisdiction for summary trial; and, a conviction made under such circumstances is invalid, and will be quashed, although neither the accused nor his counsel made objection before the magistrate. (144)

A warrant of commitment for trial on a charge of theft is sufficient if it states that the chattel was stolen from the informant's building without also stating that the informant owned the chattel. (144*a*)

Sec. 597. Sec. **691.** Accused entitled to copy of depositions.

Unchanged.

A Superior Court of criminal jurisdiction may order the restoration, to an accused person committed for trial, of articles taken possession of by the police, and which are not connected with the offence charged and are not required for the purpose of evidence,

(140) The old sec. 595 is made into these two sections 688 and 689.
(141) R. v. Goulllould, 7 Can. Cr. Cas., 432.
(142) The form of warrant of committal for trial is now form 22.
(143) R. v. Mooney, Que. Off. Rep., 15 K. B., 57; 11 Can. Cr. Cas., 333.
(144) *Ex p.* Duffy, 8 Can. Cr. Cas., 277.
(144*a*) R. v. Leete, 7 Can. Cr. Cas., 301.

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— the application having been first made to and refused by the committing magistrate. (145)

Sec. 598. Sec. **692. Recognizance to prosecute or give evidence.** *Unchanged.* (145*a*)

Sec. " Sec. **693. Warrant for arrest of absconding witnesses.** *Unchanged.* (145*a*)

Sec. 599. Sec. **694. Witness refusing to be bound over may be committed to gaol.** *Meaning unchanged.* (146)

Sec. 600. Sec. **695. Transmission of documents after committal for trial.** *Meaning unchanged.*

Sec. 601. Sec. **696. Rule as to bail.** When any person appears before any justice charged with an indictable offence punishable by imprisonment for more than five years, other than treason or an offence punishable with death or an offence under any of the sections, seventy-six to eighty-six inclusive, and the evidence adduced is, in the opinion of such justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the justice, jointly with some other justice, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the two justices, will be sufficient to ensure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two justices shall take the recognizances of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave.

2. In any case in which the offence committed or suspected to have been committed is an offence punishable by imprisonment

(145) *Ex p.* MacMichael. 7 Can. Cr. Cas., 549.

(145*a*) All the paragraphs of the old sec. 598, (except par. 5 thereof), are contained in these two new sections, 692 and 693; while par. 5 of the old section, (which relates to the estreating of forfeited recognizances), is here omitted, and made into sec. 1100, *post*. The forms of recognizance mentioned in the new sec. 692, are forms 23, 24 and 25.

(146) The form of commitment of a witness refusing to be bound over is now form 26; and the form of Order for his discharge is now form 27.

for a term less than five years any one justice before whom the accused appears may admit to bail in manner aforesaid, and such justice or justices may, in his or their discretion, require such bail to justify upon oath before him or them as to their sufficiency.

3. In default of such person procuring sufficient bail, such justice or justices may commit him to prison, there to be kept until delivered according to law.

4. The recognizance mentioned in this section shall be in form 28. (147)

Sec. 601. Sec. **697. Recognizance of bail may be for appearance at Court of General or Quarter Sessions.** Where the offence is one triable by the court of general or quarter sessions of the peace and the justice is of opinion that it may better or more conveniently be so tried, the condition of the recognizance may be for the appearance of the accused at the next sittings notwithstanding that a sitting of a superior court of criminal jurisdiction capable of trying the offence intervenes. (147)

Sec. 602. Sec. **698. Bail after committal.** — In case of any offence other than treason or an offence punishable with death, or an offence under any of the sections, seventy-six to eighty-six inclusive, where the accused has been finally committed, as herein provided, any judge of any superior or county court, having, jurisdiction in the district or county within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into a recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of the accused to bail.

(147) These two sections are formed from the old section 601, without any material alteration.

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	2. Such warrant of deliverance shall be in the form 29.	*Slightly altered.*
Sec. 603.	Sec. **699. Bail by Superior Court, in cases of treason and of capital offences.**	*Meaning unchanged.*
Sec. 604.	Sec. **700. Application to Superior Court, for bail, after committal.** — When any person has been committed for trial by any justice, the prisoner, his counsel solicitor or agent may notify the committing justice, that he will, as soon as counsel can be heard, move before a Superior Court of the province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under section six hundred and ninety-eight, for an order to the justice to admit such prisoner to bail.	
	2. Such committing justice shall, as soon as may be, after being so notified, transmit to the clerk of the Crown, or the chief clerk of the court, or the clerk of the county court or other proper officer, as the case may be, endorsed under his hand and seal, a certified copy of all informations, examinations, and other evidence, touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of commitment, and the packet containing the same shall be handed to the person applying therefor, for transmission, and it shall be certified on the outside thereof to contain the information concerning the case in question.	
	3. If any justice neglects to comply with the foregoing provisions of this section, according to the true intent and meaning thereof, the court, to whose officer any such information, examination, other evidence, or warrant of commitment ought to have been delivered, shall, upon examination and proof of the offence in a summary manner, impose such fine upon such justice as the court thinks fit.	
		Altered as here set forth.

Sec. " Sec. **701. Order upon such application.** — Upon application for bail as aforesaid to any such court or judge the same order, concerning the prisoner being bailed or continued in custody, shall be made as if the prisoner was brought up upon a *habeas corpus*. (148)

Upon an application to bail a prisoner, after he is committed for trial, the Court is to have regard to the nature of the crime charged upon the depositions, the probability of a conviction, and the severity of the punishment. (149)

With regard to offences which before the Code were misdemeanors, the accused, when committed for trial upon habeas corpus proceedings, is entitled to bail, as a matter of right. But where he is committed for trial for an indictable offence which, before the Code, was a felony, he is not entitled to bail as of right. It is, in that case, discretionary with the court exercising *habeas corpus* jurisdiction to allow or refuse bail; and, in determining whether or not bail should be granted, the probability of the party appearing for trial, in case of his being bailed, is the principal consideration: so that the question of guilt or innocence may be properly taken into account in considering the degree of such probability. If the evidence upon which the committal for trial is based raises a serious doubt as to the guilt of the accused, or if such evidence stands indifferent as to whether he is guilty or not, the application for bail should be granted. (150)

Where a prisoner committed for trial on a charge of manslaughter would ordinarily be admitted to bail, bail will not be refused because the Crown prosecutor swears to a belief that he can prove the offence to have been murder. (151)

Sec. 605. Sec. **702. Warrant of deliverance.** *Unchanged.*

Sec. 606. Sec. **703. Warrant to arrest bailed person about to abscond.** *Unchanged.*

Sec. 607. Sec. **704. Delivery of accused to prison.** (152)

IDENTIFICATION OF CRIMINALS.

The old *Identification of Criminals' Act*, (61 V., c. 54), noted at page 744 of the Author's second edition of the Criminal Code, is repealed, and is replaced by the new *Identification of Criminals' Act* (R. S., 1906, c. 149), now forming part of the Appendix to the present Supplement.

(148) The old section 604 is made into these two new sections 700 and 701.

(149) R. v. Godfrickson, 10 Can. Cr. Cas., 239.

(150) *Ex p.* Fortier, 6 Can. Cr. Cas., 191. See R. v. Cole, 5 Can. Cr. Cas., 330.

(151) R. v. Spicer, 5 Can. Cr. Cas., 229.

(152) The receipt of the keeper of the prison for an accused delivered to him under a warrant is now form 30.

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PART XV.

SUMMARY CONVICTIONS.

Interpretation.

Sec. 839. } Sec. 900. } **705. Definitions. — In this Part, unless the context otherwise requires, —**

(*a*) 'territorial division' means district, county, union of counties, township, city, town, parish or other judicial division or place; (1)

(*b*) 'the court' in the sections of this Part relating to justices stating or signing cases means and includes any superior court of criminal jurisdiction for the province in which the proceedings in respect of which the case is sought to be stated are carried on; (2)

(*c*) 'district' or 'county' includes any territorial or judicial division or place in and for which there is such judge, justice, justices's court, officer or prison as is mentioned in the context; (3)

(*d*) 'common gaol' or 'prison' for the purpose of this Part means any place other than a penitentiary in which persons charged with offences are usually kept and detained in custody; (3)

(*e*) 'clerk of the peace' includes the proper officer of the court having jurisdiction in appeal under this Part, and, in the province of Saskatchewan or Alberta, and in the Northwest Territories, means the clerk of the Supreme Court of the judicial district within which conviction under this Part takes place or an order is made. (4)

Disqualifying Interest or Bias. — There are instances upon rec-

(1) Taken from subsec. (*c*) of the old sec. 839.
(2) Taken from paragraph 1 of the old sec. 900.
(3) Taken from subsections (*d*) and (*e*) of the old section 839.
(4) Taken from subsection (*b*) of the old sec. 839, but added to as here set forth.

ord of magistrates being punished for acting as judges in matters in which they themselves were parties. (5)

Where it appeared, that at the time of a trial before a parish court commissioner, the plaintiff was one of the commissioner's own servants, it was held, upon a review of the commissioner's decision, that it was improper for him to sit, and a non-suit was ordered. (6)

Any pecuniary interest, however slight, even if indirect, will, as a rule, disqualify a magistrate from taking part in the decision of a case. (7)

A magistrate, engaged in the same kind of business as a trader prosecuted under the Transient Traders' License Law, is thereby disqualified from adjudicating upon the charge. (8)

A justice should be entirely free from prejudice, bias or partiality in respect of all matters before him. (8*a*)

Justices should avoid giving any ground for the belief that they influence others in arriving at a decision.

Where during the hearing of an appeal from a refusal to grant a license, one of the justices, who had refused the license, was present on the bench, and conversed with some of the magistrates who were hearing the appeal, on some matter unconnected with the appeal, it was held that, being present, he formed part of the court, and that, although in reality he did not act in the hearing or determination of the appeal, the order of the Sessions was invalid. (9)

Although the interest, in order to be a disqualifying one, need not be pecuniary, it must, if not pecuniary, be of a substantial nature. The mere *possibility*, — not amounting to a *likelihood*, — of bias, in favor of one of the parties, does not, *ipso facto*, avoid the justice's decision. In order to have that effect, the bias, or likelihood of bias, must be shown, at least, to have a real basis; and, if a magistrate has such a substantial interest, — whether pecuniary or not, — as to make it *likely* for him to have a real bias in the matter, he should take no part in the decision, and should entirely withdraw during the whole case. (10)

Where, for instance, at a vestry meeting, which considered the

(5) Mayor of Hereford's Case, per Holt, C. J., 2 Ld. Raym., 766.
(6) Gallant v. Young, 11 C. L. T., 217, 218.
(7) R. v. Chapman, 1 O. R., 582.
(8) R. v. Leeson, 5 Can. Cr. Cas., 184.
(8*a*) R. v. Ell, 10 O. R., 727; 13 Ont. A. R., 526.
(9) R. v. O'Grady, 7 Cox C. C., 247.
(10) R. v. Rand, 35 L. J. M. C., 157; L. R., 1 Q. B., 230; R. v. Meyer, 1 Q. B. D., 173; R. v. Sunderland, J. J., [1901], 2 K. B., 257; R. v. Dublin, J. J., [1894], 2 Q. B. Ir., 527; R. v. Farrant, 20 Q. B. D., 58; R. v. Cumberland, J. J., 58 L. T., N. S., 491.

obstruction of a highway, the resolution, directing that the alleged obstructor be notified to remove the obstruction, was the result of a motion made by a justice who afterwards sat, and, adjudicated upon the case taken, against the party so notified, for having failed to remove the obstruction, it was held that the justice was disqualified from trying the case, because his having moved the resolution was ground for a reasonable apprehension of real bias on his part. (11)

The mere fact that a justice, as a druggist, fills medical prescriptions containing alcohol, does not give him such an interest as disqualifies him from sitting on a charge against a person for selling liquor without a license (12) nor does the fact that the justice is a license inspector for a district outside of and adjoining that where the offence in question was committed disqualify him. (13)

With regard to the likelihood of bias on account of relationship, it has been held that where the prosecutor, — who was entitled to a share of the fine, — was the justice's father, the justice was disqualified. (14)

And a magistrate, whose grandfather was a brother of the defendant's great grandmother was held to be incompetent under the *Canada Temperance Act*. (15)

A magistrate was held to be disqualified in a case in which the defendant herself was the widow of the magistrate's deceased son. (16) But, where the defendant was the husband of the widow of the magistrate's deceased son, it was held that there was no relationship by affinity between the magistrate and the defendant, so as to disqualify the magistrate from hearing the case. (17) And the fact that the prosecutor, — acting as a public officer, *but not entitled to any share in the fine*, — was the husband of the justice's wife's sister was held not to disqualify the justice. (18)

It has been held that the fact that a *qui tam* action is pending against the magistrate at the suit of the accused's father is not a sufficient ground of bias. (19)

It has been held that a magistrate is disqualified from trying a case where there is a *bona fide* action for official misconduct pending against him at the suit of the husband of the accused, (20)

(11) R. v. Galsford, [1892], 1 Q. B., 381.
(12) R. v. Richardson, 20 O. R., 514.
(13) *Ex p.* Michaud, 34 N. B. R., 123; 4 Can. Cr. Cas., 569.
(14) R. v. Longford, 15 O. R., 59.
(15) *Ex p.* Jones, 27 N. B. R., 552.
(16) *Ex p.* Margaret Wallace, 27 N. B. R., 174. See *Ex p.* Doak, 19 C. L. T., Occ. N., 425.
(17) *Ex p.* William Wallace, 26 N. B. R., 593.
(18) R. v. Major, 33 C. L. J., 162; 29 N. S. R., 273.
(19) *Ex p.* Thomas Gallagher, 33 C. L. J., 547.
(20) *Ex p.* Hannah Gallagher, 4 Can. Cr. Cas., 486.

although, if it appear that the action is a mere sham to attempt to disqualify the magistrate, its pendency would not operate as a disqualification. (21)

Where some persons were associated together to aid in enforcing the *Canada Temperance Act,* and one of these persons, N., with money furnished by the others, purchased liquors so as to maintain a prosecution carried on at the expense of the other members of the association, and, on the evidence of N., (a cousin of the justice who tried the case), the defendant was convicted, it was held that the justice was not disqualified. (22)

When the magistrate is one of a class of persons for whose benefit the prosecution is instituted, this will, as a rule, be sufficient to disqualify him. Thus, where a justice was a member of a division of the Sons of Temperance, which carried on a prosecution for selling liquor, he was held incompetent to try the case, and a conviction obtained before him was held bad. (23)

And justices, who belonged to a temperance alliance of which the president is the party prosecuting, and to which association any fine to be imposed for an offence against the liquor law is payable, have been held, disqualifying from trying a charge; and the proceedings were not validated by the fact that, between the time when the information was received by such justices and the hearing of the charge, the justices had withdrawn from the association. (24)

But where, in prosecutions for offences against the *Canada Temperance Act,* taken before magistrates who were "thorough-going Scott Act men," it was alleged that these magistrates had said that, in no case of conviction, would they inflict a less fine than $50, and that one of them was, moreover, a member of a local committee for taking prosecutions under the Act; and it transpired that, before the Act came into operation in the county, he had resigned from the committee, it was held that there was no disqualifying interest in the magistrates, nor any real or substantial bias attributable to them, nor any reason why they should not lawfully adjudicate in the cases. (25)

A justice who was a shareholder in a railway company was held to be disqualified from convicting a person of the offence of travelling on the company's railway without ticket. (26)

But it has been held that a justice is not disqualified when he is merely one of the ordinary members of a society on whose be-

(21) *Ex p.* Scribner, 32 N. B. R., 176.
(22) *Ex p.* Grieves, 29 N. B. R., 543.
(23) R. v. Simmons, 14 N. B. R., 159.
(24) Daignault v. Emerson *et al.*, 5 Can. Cr. Cas., 534.
(25) R. v. Kleup, 10 O. R., 143.
(26) R. v. Hammond, 9 L. T., 423.

half the prosecution is brought, and when such ordinary members have no control over or responsibility for any prosecution brought by the society; (27) nor where he is simply an honorary member of the prosecuting society, to whose funds he has contributed a small sum of money, but in whose affairs he has no right to take any part. (28)

Where the justice was a shareholder in a company owning ships insured in concerns of which the prosecutor was agent, the court thought that the justice was not disqualified to act. (29)

In many cases, where the justice, as one of a class, may be remotely interested in the result of a decision, the disqualification is, by statute, expressly removed, and the justice is empowered to act. (30)

But the removal of the disqualification by statute is limited to that therein provided for, and does not extend so far as to relieve a magistrate from disqualification, if the circumstances are such that there is likelihood of his being biassed; as, for instance, where he is not only a member of a municipal council, or of a local board of health, or other body, which passed the resolution directing the prosecution, but was, moreover, present at and voted for the passing of the resolution. In such a case he would be disqualified. (31)

By section 578, *ante*, of the present Code, it is provided that no person who is a master or the father, son, or brother of a master in the trade or business in or in connection with which any offence of intimidation, under section 501, *ante*, is charged to have been committed, shall act as a magistrate or justice in any such case, or as a member of any court for hearing any appeal in any such case.

A conviction rendered by an interested or biassed magistrate may, when there has been no waiver of the objection, be set aside by means of a *certiorari;* (32) or, when the ground of objection is known at or before the hearing, the disqualified magistrate may be prevented from acting, and the proceedings before him may be stopped by means of a prohibition. (33)

(27) Allinson v. General Council, [1894], 1 Q. B., 750. See, also, R. v. Burton, [1897], 2 Q. B., 468; and R. v. Mayor of Deal, 35 L. T., 439.

(28) R. v. Herrell, 1 Can. Cr. Cas., 510.

(29) R. v. Mackenzie, 17 Cox C. C., 542.

(30) *Ex p.* Workington Overseers, [1894], 1 Q. B., 418; R. v. Bolingbroke, [1893], 2 Q. B., 347. See *Ex p.* McCoy, 1 Can. Cr. Cas., 410; R. v. Grimmer, 25 N. B. R., 424; R. v. Hart, 2 B. C. R., 264; *Ex p.* Driscoll, 27 N. B. R., 216.

(31) R. v. Lee, 9 Q. B. D., 349; R. v. Gaisford, [1892], 1 Q. B., 38; R. v. Henley, [1892], 1 Q. B., 504; Tessier v. Desnoyers, Q. J. R., 12 S. C., 35; R. v. Milledge, 4 Q. B. D., 332; R. v. Douglas, [1898], 1 Q. B., 560.

(32) R. v. Sunderland, J. J., [1901], 2 K. B., 257.

(33) R. v. Brown, 16 O. R., 41.

APPLICATION OF PART.

Sec. 840. Sec. **706. To all cases of summary conviction, etc.** — Subject to any special provision otherwise enacted with respect to such offence, act or matter, this Part shall apply to, —

(*a*) every case in which any person commits, or is suspected of having committed, any offence or act over which the Parliament of Canada has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(*b*) every case in which a complaint is made to any justice in relation to any matter over which the Parliament of Canada has legislative authority, and with respect to which such justice has authority by law to make any order for the payment of money or otherwise.

Unchanged in meaning.

Since the printing of the present Supplement was commenced, the *Industrial Disputes Investigation Act*, 1907, (6 and 7 Ed. VII, c.), has been passed by the Dominion Parliament. Section 53 of this Act makes it unlawful for any employer to declare or cause a lockout or for any employee to go on strike, on account of any dispute, prior to or during a reference of such dispute to a Board of Conciliation and Investigation in accordance with the Act. Section 58 of the Act provides that any employer declaring or causing a lockout, contrary to the provisions of the Act, shall be liable to a fine of not less than $100 and not more than $1,000 for each day that such lockout lasts. Section 59 enacts that any employee who goes on strike contrary to the provisions of the Act shall be liable to a fine of not less than $10 and not more than $50 for each day that such employee is on strike. Section 60 makes it a criminal offence, punishable by a fine of not less than $50 and not more than $1,000 for any person to incite, encourage or aid any employer to declare or continue a lockout or any employee to go or continue on strike contrary to the provisions of the Act. And section 61 provides that the procedure for enforcing these penalties shall be that prescribed by this Part, — XV, — of the Code.

Ouster of Summary Jurisdiction.—The principle that, — when property or title is in question, or, when there is a *bona fide* claim of right to do the act complained of, — justices are ousted of

their summary jurisdiction, is not only a qualification raised by the law in the execution of penal statutes but it is also the subject sometimes, of special statutory enactment. Thus, it is provided, by section 709, *infra,* of the present Code, that no justice shall try any case of assault, in which any question arises as to the title to lands., etc., or as to any insolvency or any execution under the process of any court of justice.

When a claim of title to land is set up by the defendant, the question for the justice to decide is whether the defendant's liability for the act charged against him, as a criminal offence, is contingent upon a decision of the question of title. (34)

If the right set up could legally exist, the defendant could plead it in a civil action, but if it could not exist, why should the justices be ousted of their jurisdiction? The reason their jurisdiction is ousted is that they cannot try the right, but where the right cannot legally exist, there is no right to try. (35)

There must be some color for the claim. (36) And it is for the justices to determine, from all the facts of the case, whether a claim of right. when put forward, is made *bona fide* and with a show of reason. (37) If they determine that it is not so made, it is their duty to proceed with and decide the case. (38) Still, if the grounds upon which they decide against the fairness and reasonableness of a claim of right be insufficient, the court will review their determination and over-rule it. (39)

If the justices believe that there is a *bona fide* question of title, they have no jurisdiction. (40) And even when the matter is doubtful, it will be enough to stop their proceedings, and they cannot give themselves jurisdiction by a false decision. (41)

A defendant was convicted of the offence of unlawfully and wilfully destroying or damaging a fence upon the complainant's land: and it was held, that, upon the evidence, there was, on the part of the defendant, such an honest belief reasonably entertained, in the existence of a right of way over a lane on the complainant's land as satiafied the section of the Code to the effect that there is no criminal offence under section 507 (now section 530), unless the act of damage is done "without legal justification or excuse and

(34) South Norfolk v. Warren, 12 C. L. T., 512.
(35) Remarks of Blackburn, J., in Hudson v. McRae. 33 L. J. M. C., 65.
(36) Rees v. Davies, 8 C. B., (N. S.), 36.
(37) R. v. Dodson, 9 Ad. & El., 704.
(38) Mobberley v. Collingwood, 25 O. R., 625.
(39) R. v. Dodson, *supra.*
(40) Legg v. Pardoe, 30 L. J., M. C., 108.
(41) R. v. Stimpson, 32 L. J., M. C., 208; R. v. Nunneley, 37 L. J., M. C., 260.

without color of right," and as rendered the conviction bad for want of jurisdiction; (42)

It has been held that the proviso, contained in the Imperial Act relating to malicious injuries to property, to the effect, that *nothing therein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of*, impliedly restricts the exemption of *bona fide* claims of right. from summary jurisdiction to cases, where the justices are satisfied of the fairness and reasonableness of the claims. (43)

It has been held that, if the defendants, although *bona fide* acting upon supposed rights, have exceeded what was necessary for the assertion or protection of these rights, and have thus committed damage, they are criminally responsible for such excess. (44)

But it has also been held that, in assault cases, a question of right is a good defence, even if excessive force was used; because the words of the proviso in the statute are large enough to exclude any case of assault whatever in which a question of title arises. (45)

On the hearing of an information for unlawfully fishing in a non-navigable river, which was the private fishery of another, it was held that as a guilty mind was not a necessary ingredient to constitute the offence, the claim of the defendant as one of the public to the right to fish in the river did not oust the jurisdiction of the justices, and that on such an information the *bona fide* belief of the defendant that he had a right to fish in the river did not prevent his being convicted. (46)

JURISDICTION.

Sec 842. Sec. **707. Hearing by one or more Justices.** — Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices as directed by the Act or law upon which the complaint or information is framed or by any other Act or law in that behalf.

2. If there is no such direction in any Act or law then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint

(42) R. v. Johnson, 40 C. L. J., 470.
(43) R. v. Mussett, 26 L. T., 429.
(44) R. v. Clemens, [1898], 1 Q. B., 556.
(45) R. v. Pearson, L. R., 5 Q. B., 237.
(46) Hudson v. McRae, 33 L. J. M. C., 65.

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	or information arose: Provided that every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed. (47)	
Sec. 842.	Sec. 708. **Any one justice may do all acts before hearing.** — Any one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more justices. 2. After a case has been heard and determined one justice may issue all warrants of distress or commitment thereon. 3. It shall not be necessary for the justice who acts before or after the hearing to be the justice or one of the justices by whom the case is to be or has been heard and determined. 4. If it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices shall be present and acting together during the whole of the hearing and determination of the case. (47)	

Notwithstanding sub-section 6 of section 842 of the old Code (now clause 1 of section 708 of the new Act), where a prosecution for an offence under the *Canada Temperance Act* is to be proceeded with before two justices of the peace, the information must be laid before two justices. (48)

(47) Meaning unchanged; but the old section 842 is now divided into these three different sections, 707, 708 and 709.

(48) *Ex p.* White, 3 Can. Cr. Cas., 94.

Sec. 842. Sec. 709. **Assault cases in which any question of title to land, etc., is involved.** — No justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. (47)

A question of title, to be a defence in an assault case, must be a question of title to land, and not as to personal property. (49)

The question as to whether the right to impound cattle is implied in the right of pasturage is not a question as to the title to land. (50)

The question whether a township is forced to repair a highway on the ground that it is a public road vested in the Crown as a provincial work, is not a question of title to land. (51)

The question as to the terms of a tenancy has been held not to be a question of title to land. (52)

But where the question is one as to the expiry of the landlord's title, and the defendant has become liable to another person for *mesne* profits, it is then a question of title to land. (53)

If the question be one as to leasehold land, it ousts the jurisdiction. (54) And so does a question as to the right of way across a railway, (55) or the right of easement on or under land. (56)

It has been held that, in assault cases, a question of right is a good defence, even if excessive force be used: because the words of the enactment are large enough to exclude any case of assault whatever, in which a question of title to land arises. (57)

The above section, (709), does not contain any provision requiring proof of reasonable grounds for the defendant's belief in his claim of title. It enacts that no justice shall hear and determine any case of assault in which any question arises as to the title to land. So that no assault case, however clearly established, can be summarily tried by a justice, if a question of title to land is

(47) The old sec. 842 is divided into three new sections, 707, 708 and 709.

(49) White v. Fox, 40 L. J., M. C., 60.

(50) Graham v. Spettigue, 12 Ont. A. R., 261.

(51) Knight v. Medora, 14 Ont. A. R., 112.

(52) English v. Mulholland, 9 P. R., 145.

(53) Montmoy v. Collier, 1 E. & B., 629.

(54) Tompkins v. Jones, 22 Q. B. D., 599.

(55) Cole v. Miles, 57 L. J., M. C., 132; R. v. Bardley, 40 J. P., 551.

(56) Howorth v. Sutcliffe, [1895], 2 Q. B., 358.

(57) R. v. Pearson, L. R., 5 Q. B., 237.

raised in it. (58) But if the assault was independent of the question of title, the fact that there was such a question is no defence, even if the assault arose out of a dispute between the parties as to the title to land. (59)

INFORMATION AND COMPLAINT.

Sec. 845. Sec. **710.** It shall not be necessary that any complaint upon which a justice may make an order for the payment of money or otherwise shall be in writing, unless it is so required by the particular Act or law upon which such complaint is founded.

2. Every complaint upon which a justice is authorized by law to make an order, and every information for any offence or act punishable on summary conviction, may, unless it is by this Part or by some particular Act or law otherwise provided, be made or had without any oath or affirmation as to the truth thereof.

3. Every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences.

4. Every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf. *Altered slightly in the wording.*

Although this section requires that every information shall be for one offence only, and not for two or more offences; section 725, *post*, provides that no information, etc., shall be held to charge two offences or be held to be uncertain, on account of its stating the offence to have been committed in different modes, or in respect of one or other of several articles either conjunctively or disjunctively.

If distinct and separate acts are committed on different days, the offences are distinct and subject to separate penalties. (60) But ambiguity arises upon a repetition of similar acts upon the *same* day. With regard to cases of this kind, no general rule can

(58) *Ib.*
(59) R. v. Edwards, 4 W. R., 257.
(60) R. v. Mathews, 10 Mod., 27.

be laid down; but the law in each case must be determined, by the nature of the offence and the manner in which the particular statute applicable to it is worded. Killing several hares on the same day has been held to be a single offence; and so, likewise, is exercising trade on a Sunday a single offence, although several sales have taken place. (61)

And a charge of stealing "*in* or *from*" a building is a charge of only one offence. (62)

A charge of keeping a house of ill-fame on a date named and on other days previously, does not constitute a charge of a distinct offence upon each of these days, — the only offence charged, by these words, being the continuous keeping of a house of ill-fame during these days. (63)

A charge of unlawfully distilling spirits *and* making or fermenting beer, on certain premises, without having a revenue license therefor, charges only one offence and not two offences. (64)

Upon a summary hearing of a charge punishable on summary conviction, if the information charges more than one offence all but one should be struck out upon objection taken; and if the objection be overruled and evidence taken upon the several charges until the conclusion of the prosecutor's case when all but one are abandoned a conviction upon that one is invalid, and should be quashed on appeal. (65)

Of course, when there is special legislation to that effect, the information may include more than one offence. Thus, where a *Liquor License Act* provides that several charges may be included in one information; and, if the magistrate adjudges the accused guilty upon such charges, the fines may be imposed in and by one conviction adjudging a forfeiture in respect of each offence. (66)

On a proceeding by summons, in the nature of a criminal prosecution under the *Ontario Election Act*, all corrupt practices charged as having been committed by the accused in respect of the same election may be tried together and included in the one judgment of conviction. (67)

SUMMONS AND WARRANT.

Sec. 843. Sec. **711. Compelling appearance etc.** — The provisions of Parts XIII and XIV, relating to compelling the appearance of the accused be-

(61) Marriott v. Shaw, Cowp., 278; R. v. Lovett, 7 T. R., 152; Crepps v. Durden, Cowp., 640; Wray v. Toke, 12 Q. B., 499.
(62) R. v. White, 4 Can. Cr. Cas., 430.
(63) R. v. Burnby, 70 L. J., K. B., 739; [1901] 2 K. B., 458.
(64) R. v. McDonald, (Joseph), 6 Can. Cr. Cas., 1.
(65) R. v. Austin, 10 Can. Cr. Cas., 34.
(66) R. v. Whiffin, 4 Can. Cr. Cas., 141.
(67) *Re* A. E. Cross, 4 Can. Cr. Cas., 173.

fore the justice receiving an information for an indictable offence and the provisions respecting the attendance of witnesses on a preliminary inquiry and the taking of evidence thereon, shall, so far as the same are applicable, except as varied by sections immediately following, apply to any hearing under the provisions of this part: Provided that whenever a warrant is issued in the first instance against a person charged with an offence punishable under the provisions of this part, the Justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on the person arrested at the time of such arrest.

2. Nothing herein contained shall oblige any justice to issue any summons to procure the attendance of a person charged with an offence by information laid before such Justice whenever the application for any order may, by law, be made *ex parte*.

Slightly altered, as here set forth.

A sworn information merely stating that the complainant has just cause to suspect and believe, and does suspect and believe that the defendant has committed the offence charged, will not alone authorize a justice to issue a warrant of arrest. Where the complaint is laid upon information and belief, and the causes of suspicion are not disclosed therein, the justice should examine the complainant and his witnesses *ex parte*, under oath touching the grounds of suspicion; and the justice should grant a warrant of arrest only in case he himself entertains the like suspicion as a result of such investigation. (68)

Sec. 844. Sec. **712. Backing warrants.** — The provisions of section six hundred and sixty-two relating to the endorsement of warrants shall apply to the case of any warrant issued under the provisions of this Part against the accused, whether before or after conviction, and whether for the apprehension or imprisonment of any such person. *Altered as here set forth.*

Where a warrant of commitment was issued in one county against the accused who was not then in custody, and he was ar-

(68) *Ex p.* Coffon, 11 Can. Cr. Cas., 48. And see R. v. Lizotte, 10 Can. Cr. Cas., 316; and *Ex. p.* Boyce, 24 N. B. R., 347.

rested thereunder in another county without any endorsement of the warrant, and was brought back to the county in which the warrant issued, and there imprisoned as the warrant directed, the irregular arrest is not a ground for releasing the accused on *habeas corpus*. (69)

Sec. 848. Sec. 713. **Summons or warrant for witness residing out of jurisdiction.** *Unchanged.*

TRIAL.

Sec. 849. Sec. 714. **Hearing in open Court.** *Unchanged.*

Sec. 850. Sec. 715. **Counsel for parties.** — The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel, *solicitor or agent* on his behalf.

2. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined, by counsel or attorney on his behalf.

Altered as here indicated in italics.

Sec. 851. Sec. 716. **Evidence to be on oath. Commissioners to be appointed to take evidence out of Canada.** Every witness at any hearing shall be examined upon oath or affirmation, by the justice before whom such witness appears for the purpose of being examined.

2. A Judge of any superior or county court may appoint a commissioner or commissioners to take the evidence upon oath of any person who resides out of Canada and is stated to be able to give material information relating to an offence for which a prosecution is pending under this Part, or relating to any person accused of such offence, in the circumstances and in the manner, *mutatis mutandis*, in which he might do so under section nine hundred and ninety-seven; and all the provisions of the said section, in respect of matters arising thereunder, shall apply *mutatis mutandis* to matters arising under this section: Provided

(69) R. v. Whiteside, 8 Can. Cr. Cas., 478.

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	that no such appointment shall be made without the consent of the Attorney General.	*Altered, as here set forth.*
Sec. 852.	Sec. 717. **Prosecutor need not prove a negative: but defendant may prove affirmative of any exemption, etc.**	*Unchanged.*
Sec. 853.	Sec. 718. **Non-appearance of accused. Ex parte hearing, or adjournment until apprehension of defendant.**	*Unchanged.*

The hearing before a justice trying a person for an offence punishable on summary conviction may be adjourned from time to time under this section, although the accused be not present, provided the adjournments are made in the presence and hearing of his solicitor or agent. (70)

A magistrate has no jurisdiction to proceed in the absence of the accused in a summary proceeding, without evidence that the summons was served a reasonable time before the hearing. Where the proof of service of the summons was that it had been left with an adult person at defendant's house, on the date preceding the hearing, this does not constitute evidence upon which the magistrate could adjudicate upon the question of reasonable notice, without proof of the hour of service and the distance from the place of hearing. (71)

On default of defendant's appearance to a summons in a summary conviction matter, a justice of the peace cannot legally proceed to take evidence and adjudicate without proof being made of service of summons. (72)

Where an accused failed to attend in pursuance of a summons, and the magistrate, without proof of service of the summons, took evidence in support of the charge, and issued a warrant for the defendant's arrest to answer the charge, the magistrate has no jurisdiction to convict the accused, when brought before him, without again taking the evidence. (73)

Where the service of a summons is proved to have been made *personally* upon the defendant in the town where he was carrying on business and where the hearing was to take place, and the date of hearing was the day following that of service, the magistrate had evidence upon which to find that a reasonable notice had been given, and was entitled to proceed in the defendant's absence. If the service were made at a late hour on the day prior to the day of hearing, it was for the defendant to have applied to the magis-

(70) Proctor v. Parker, 3 Can. Cr. Cas., 374.
(71) *Re* O'Brien, 10 Can. Cr. Cas., 142.
(72) R. v. Levesque, 8 Can. Cr. Cas., 505.
(73) *Ib.*

trate for an adjournment, instead of ignoring the summons. (74)

On the return of a summons in a summary proceeding before justices of the peace, the person summoned must wait a reasonable time after the hour named in the summons, when the justices are, at that hour, engaged in other official business. (75)

In summary matters before a justice, the information cannot be amended at the hearing, on the non-appearance of the accused, so as to charge a separate and distinct offence from that for which the summons was issued. (76)

Sec. 854. Sec. **719. Non-appearance of prosecutor. Dismissal or Adjournment.** — If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice by virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his counsel, *solicitor or agent*, the justice shall dismiss the complaint or information unless he thinks proper to adjourn the hearing of the same until some other day upon such terms as he thinks fit.

Altered, as here indicated in italics.

Sec. 855. Sec. **720. Proceedings when both parties appear.** — If both parties appear, either personally or by their respective counsel *solicitors or agents* before the justice who is to hear and determine the complaint or information such justice shall proceed to hear and determine the same.

Altered, as here indicated in italics.

Where separate charges for similar offences are pending before the magistrate, either of which by an amendment could have been tried under the process for the other, the magistrate should not, after hearing evidence on the one offence, adjourn the trial thereof and hear evidence upon the other offence; and a conviction in the second is made without jurisdiction if the evidence in the first was likely to influence the magistrate against the accused in the second charge, although the first charge was dismissed. (77)

A single conviction for two separate offences may be quashed, although the accused did not appear before the justice, if it cannot

(74) R. v. Craig, 10 Can. Cr. Cas., 249.
(75) R. v. Wipper, 5 Can. Cr. Cas., 17.
(76) R. v. Lyons, 10 Can. Cr. Cas., 130.
(77) R. v. Burke, (No. 2), 8 Can. Cr. Cas., 14.

be ascertained from the proceedings for which separate offence the justice intended to convict. (77*a*)

Where three separate charges for similar offences each committed within a few days of the other are consecutively tried by a magistrate on the one day, and the magistrate announces a conviction or acquittal at the conclusion of each case, it is no objection to the validity of the trials that they were intermixed by the reservation of the question of punishment, until after the conclusion of all three trials. (78)

Sec. 856. Sec. **721. Arraignment of Accused.** — If the defendant is personally present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

2. If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice present at the hearing shall convict him or make an order against him accordingly.

3. If the defendant does not admit the truth of the information or complaint, the justice shall proceed to inquire into the charge and for the purposes of such inquiry shall take the evidence of witnesses both for the complainant and accused in the manner provided by Part XIV. in the case of a preliminary inquiry.

4. The prosecutor or complainant is not entitled to give evidence in reply if the defendant has not adduced any evidence other than as to his general character.

5. In a hearing under this Part the witnesses need not sign their depositions.

Slightly altered, as here set forth.

If the accused is, in fact, present before the magistrate who has jurisdiction over the person and the offence, the hearing of the charge may be lawfully proceeded with, notwithstanding that the

(77*a*) Simpson v. Lock, 7 Can. Cr. Cas., 294.
(78) R. v. Bigelow, 8 Can. Cr. Cas., 132.

warrant, on which the accused was arrested, was executed by a person not legally qualified for that purpose. (79)

Paragraph 3 of the above section 721 provides for the taking of evidence according to the provisions of Part XIV.. *ante*, section 682 (par. 3) of which Part requires the evidence to be taken down in writing. And, so, it has been held that a summary conviction for vagrancy is bad, if made upon evidence not reduced to writing. (80)

The failure of the justices in a summary conviction matter to take down in writing depositions of the witnesses both for the complainant and the accused, is a ground for quashing the conviction on *certiorari*. (81)

Sec. 857. Sec. **722. Adjournment.** — Before or during the hearing of any information or complaint the justice may, in his discretion adjourn the hearing of the same to a certain time or place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective counsel, *solicitors or agents* then present, but no such adjournment shall be for more than eight days.

2. If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do not appear, personally or by his or their counsel, *solicitors or agents* respectively, before the justice or such other justices as shall then be there, the justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

3. If the prosecutor or complainant does not appear the justice may dismiss the information, with or without costs, as to him seems fit.

4. Whenever any justice adjourns the hearing of any case he may suffer the defendant to go at large or may commit him to the common gaol or other prison within the territorial division for which such justice is then acting, or to such other safe custody as such justice thinks fit, or may discharge the defendant upon his recogniz-

(79) *Ex p.* Gilberson, 4 Can. Cr. Cas., 537.
(80) R. v. McGregor, 10 Can. Cr. Cas., 313.
(81) Denault v. Robida, 8 Can. Cr. Cas., 501.

ance, with or without sureties at the discretion of such justice, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned.

5. Whenever any defendant who is discharged upon recognizance, or allowed to go at large, does not appear at the time mentioned in the recognizance or to which the hearing or further hearing is adjourned the justice may issue his warrant for his apprehension. *Altered as here indicated in italics.*

An adjournment of the hearing of a complaint under the summary convictions clauses of the Code cannot be made by the Clerk of the Court in the absence of the magistrate to a date more than eight days after that when the last adjournment was ordered by the magistrate. (82)

It is not competent for magistrates, where an information charges an offence which they have no jurisdiction to try summarily, to convert the charge into one which they have jurisdiction to try summarily, and to so try it on the original information.(83)

DEFECTS AND OBJECTIONS.

Sec. 846. Sec. **723. Proceedings not objectionable on certain grounds.** *Unchanged.*

A conviction by a magistrate on a summary trial for keeping a common bawdy house need not specify the location of the house further than to shew that it was at a place within the jurisdiction of the Court. (84)

A warrant of commitment under a summary conviction must show on its face that the person by whom it is made has magisterial authority at the place where the offence occurred; and an objection in this respect is not cured by the above section 723. (85)

A warrant of remand signed with the addition of the letters "J. P.", after the signature, and containing a reference to the signer "or some other justice" for the county, must be taken to shew judisdiction on its face. (86)

Sec. 847. Sec. **724. Variance or defect, as to time when or as to place where, etc., not to be deemed material.** *Unchanged.*

(82) Paré v. Recorder of Montreal, 10 Can. Cr. Cas., 295.
(83) R. v. Dungey, 5 Can. Cr. Cas., 38. See *Ex p.* Duffy, 8 Can. Cr. Cas., 277.
(84) R. v. Shepherd, 6 Can. Cr. Cas., 463.
(85) R. v. Gow, (alias Joe), 11 Can. Cr. Cas., 81.
(86) *Ex p.* Hilchie, 11 Can. Cr. Cas., 85.

The variance between the information laid and the evidence adduced, referred to, in this section, as not being material is merely a difference between the mode of stating and the mode of proving one and the same thing in substance; and, therefore, where the evidence adduced establishes something entirely different from that charged, the objection to the variance may be taken and allowed. As, if a defendant were summoned for an assault, and the evidence showed, — instead of an assault. — that the defendant did some slight damage to property, for which, if charged therewith, he might have been summarily tried, the variance would be a good ground of objection, and ought to be sustained.

Where an information differs from the evidence by stating the complaints to be "T. B. and his partners," instead of an incorporated company by its corporate name, it is such a variance as is cured by the above section. (87)

But it is different where a manager of a company is summoned instead of the company itself. (88)

An information for the illegal selling of liquor, under the Ontario Liquor License Act, cannot be amended. if the amendment would have the effect of charging an offence of a date more than thirty days before the making of the amendment, there being in the Act a provision limiting the time for commencing prosecutions to thirty days. (89)

A summary conviction for being "a loose, idle person or vagrant", without specifying in what the vagrancy consisted is void for uncertainty. (90)

Sec. 907. Sec. **725. Proceedings not objectionable on certain other grounds.** *Meaning unchanged.*

ADJUDICATION.

Sec. 858. Sec.**726. Justice may convict, make an order, or dismiss.** *Unchanged.*

It has been held, in a New Brunswick case, that after the evidence has been heard, the justice is not bound either to convict or discharge the defendant, but that he may allow the prosecutor to withdraw the charge, although another information covering the same charge has been laid by the same prosecutor against the same defendant, and the determination thereof is still pending. (91)

Sec. 859. Sec. **727. Minute of conviction or order.** — If the justice convicts or makes an order against the

(87) Whittle v. Frankland, 31 L. J. M. C., 81.
(88) Oxford Tramway Co. v. Sankey, 54 J. P., 564.
(89) R. v. Hawthorne, 2 Can. Cr. Cas., 408.
(90) R. v. McCormack, 7 Can. Cr. Cas., 135.
(91) *Ex p.* Wyman, 5 Can. Cr. Cas., 58.

defendant, a minute or memorandum thereof may then be made, for which no fee shall be paid, and the conviction or order, in such case, shall afterwards be drawn up by the justice on parchment or on paper, under his hand and seal, in such one of the forms of conviction or of orders from 31 to 36 inclusive as is applicable to the case, or to the like effect. *Slightly altered, as here set forth.*

A conviction for refusing to close a billiard room, after a closing hour fixed by a municipal by-law, which applied to Saturdays only, is bad, if it does not shew on its face that the offence took place on a Saturday; and a conviction for keeping a billiard room open contrary to a municipal by-law "after the hour of half past eight" is bad, unless it specifies whether the time was in the morning or evening, if the by-law applies to the evening only. (92)

A conviction under a by-law must shew on its face whether the date of the alleged offence was before or after the by-law came into operation. (93)

A conviction is invalid if it awards one fine against three persons for their separate acts. (94)

A summary conviction based upon the uncorroborated evidence of an accomplice, who is shewn to have received money to testify against the accused, is properly set aside on appeal. (95)

The magistrate cannot, — when there are two charges against the defendant, — reserve judgment after hearing the evidence in one of them, and then proceed to hear the second, and convict on both charges. (96)

But where, — in the event of a defendant being charged, upon two informations, with two different offences, — the justices apply the evidence in each case to that case alone, they may postpone the announcement of their decision in the first case until they have heard and determined the second. (97)

A summary conviction awarding one month's imprisonment in default of distress under a statute which authorized imprisonment for a period not exceeding one month, will not be quashed for variance from the minute of conviction by reason of the latter stating the term to be thirty days. (98)

(92) *Re* Fisher, 9 Can. Cr. Cas., 451.
(93) *Ib.*
(94) Gaul v. Township of Ellice, 6 Can. Cr. Cas., 15.
(95) R. v. Ah Jim, 10 Can. Cr. Cas., 126.
(96) R. v. McBerney, 3 Can. Cr. Cas., 339.
(97) R. v. Sing, 6 Can. Cr. Cas., 156; R. v. Butler, 32 C. L. J., 594.
(98) *Ex p.* Rogers, 7 Can. Cr. Cas., 314.

Upon a summary conviction for wilful injury to property it is necessary that the conviction should specify the particular act done and the nature of the property damaged, otherwise the conviction will be void for uncertainty and will not support a commitment in similar terms. (99)

Sec. 860. Sec. **728. Disposal of penalties when there are joint offenders.** *Unchanged.*

Sec. 861. Sec. **729. First conviction in certain cases.** — Whenever any person is summarily convicted before a justice of any offence against Part VI., or Part VII., except section four hundred and nine and sections four hundred and sixty-six to five hundred and eight inclusive, or against Part VIII., except sections five hundred and forty-two to five hundred and forty-five inclusive, and it is a first conviction, the justice may, if he thinks fit, discharge the offender from his conviction upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the justice.

Slightly altered, as here set forth.

Sec. 862. Sec. **730. Order of dismissal and certificate thereof.**— If the justice dismisses the information or complaint, he may, when required so to do, make an order of dismissal in form 37, and he shall give the defendant a certificate in form 38 which, upon being afterwards produced, shall without further proof, be a bar to any subsequent information or complaint for the same matter, against the same defendant. *Slightly altered, as here set forth.*

Sec. 863. Sec. **731. Minute of order to be served before issuing warrant for disobedience of it.**

Meaning unchanged.

Where a warrant of commitment, under a summary conviction adjudging imprisonment, is delivered to a constable, and the defendant, then being at large, deposits money with the constable as security for his appearance when required, and gets the constable to delay the execution of the commitment for a time, the defendant cannot object to a subsequent arrest, accompanied by a return of the deposit, on the ground that it was illegal to make a second arrest under the same warrant. (100)

(99) R. v. Leary, 8 Can. Cr. Cas., 141.
(100) *Ex p.* Doherty, 5 Can. Cr. Cas., 94.

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Sec. 864. Sec. **732. Assault. Duty of justice not to deal summarily with the offence, when it is found to be more than a common assault.**

Unchanged.

Sec. 865. Sec. **733. Dismissal of complaint for assault.**

Unchanged.

Sec. 866. Sec. **734. Release from further proceedings.**

Unchanged.

No action of damages for assault lies, in favor of the party aggrieved, against an assailant tried and convicted under the above section 732, and who has paid the amount of the fine. (101)

Sec. 867. Sec. **735. Costs may be ordered on conviction or order.**

Unchanged.

Sec. 868. Sec. **736. Costs on dismissal.** *Unchanged.*

Sec. 869. Sec. **737. Recovery of costs with penalty.**

Unchanged.

Sec. 870. Sec. **738. Recovery of costs when no penalty.**

Unchanged.

The word "penalty", in these sections, is restricted to a pecuniary penalty, because of its association with the terms "paid" and "recover." (102)

The allowance, by the magistrate, on a summary conviction, of excessive costs in respect of mileage to the constable for serving subpoenas on witnesses, is not a ground for quashing the conviction. The making up of the costs is a ministerial act, which does not go to the jurisdiction. If the magistrate, in making up the costs, has not acted *bona fide*, he is liable criminally, or, if with dishonest intention, he takes too much for costs, he may be made to disgorge, but the conviction is good. (103)

Sec. 871. **Fees.** (104)

Sec. 872. Sec. **739. Provisions respecting convictions.** — Whenever a conviction adjudges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, whether the Act or law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment thereof, the justice by his conviction, or order after adjudging

(101) Larin v. Boyd, 11 Can. Cr. Cas., 74.
(102) R. v. Johnston, (No. 1), 11 Can. Cr. Cas., 6.
(103) *Ex p.* Rayworth, 2 Can. Cr. Cas., 230; *Ex p.* Howard, 32 N. B. R., 237.
(104) Transferred to section 770, *post.*

payment of such penalty, compensation, or sum of money, with or without costs, may order and adjudge, —

(*a*) that in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, shall be levied by distress and sale of the goods and chattels of the defendant, and, if sufficient distress cannot be found, that the defendant be imprisoned in the manner and for the time directed by the Act or law authorizing such conviction or order or by this Act, or for any period not exceeding three months, if the Act or law authorizing such conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, and the *costs and charges* of the distress and of the *commitment* and of the conveying of the defendant to gaol, are sooner paid; or

(*b*) that, in default of payment of the said penalty, compensation or sum of money, and costs, if any, forthwith, or within a limited time, the defendant be imprisoned in the manner and for the time mentioned in the said Act or law, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless the same, and the costs and charges of the distress and of the commitment and of the conveyance of the defendant to gaol, are sooner paid.

2. Whenever under such Act or law, imprisonment with hard labour may be ordered or adjudged in the first instance as part of the punishment for the offence of the de-

fendant, the imprisonment in default of distress or of payment may be with hard labour. (105)

Sec. 872. Sec. **740. Imprisonment when ordered in addition to fine.** — Where, by virtue of an Act or law so authorizing, the justice by his conviction adjudges against the defendant payment of a penalty or compensation, and also imprisonment, as punishment for an offence, he may, if he thinks fit, order that the imprisonment in default of distress or of payment, shall commence at the expiration of the imprisonment awarded as a punishment for the offence.

2. The like proceeding may be had upon any conviction or order in accordance with this or the last preceding section as if the Act or law authorizing the conviction or order had expresaly provided for a conviction or order in the terms permitted by this or the last preceding section. (106)

ENFORCING ADJUDICATION.

Sec. 872. Sec. **741 Warrant of distress and subsequent warrant of commitment.** — The justice making the conviction or order mentioned in paragraph (*a*) of section seven hundred and thirty-nine may issue a warrant of distress in form 39 or 40, as the case requires, and in the case of a conviction or order under paragraph (*b*) of the said section, a warrant in one of the forms 41 or 42 may issue.

2. If the warrant of distress is issued and the constable or peace officer charged with the execution thereof returns (form 43) than he can find no goods or chattels whereon to levy thereunder, the justice may issue a warrant of commitment in form 44 (107)

Section 872 (*a*) of the old Code did not authorize the justice,— in issuing a warrant of commitment, (after default of payment

(105) Taken from the first 4 paragraphs of the old sec. 872.
(106) Taken from subsections 3 and 4 of the old sec. 872.
(107) Taken from subsection 2 of the old sec. 872.

of a penalty and costs, and after the issuing of a distress warrant and return of *nulla bona*), — to include costs of commitment; and it was therefore held, in a Nova Scotia case, that the inclusion, in the justice's warrant of commitment, of such authorized costs, was a ground for the discharge of the defendant, upon *habeas corpus*. (108) But it will be seen, now, that the new section 739(*a*) expressly mentions the costs of commitment, as well as the costs and charges of the distress and of the conveying of the defendant to gaol.

A summary conviction, in which the costs awarded are directed to be paid to the magistrate, is, in that respect, invalid. (109)

Where a fine is imposed by a summary conviction, and, in default of a payment, the accused is ordered to be committed to gaol for three months with hard labor, unless the fine and costs and the charges of conveying the prisoner to gaol are sooner paid, the conviction is invalid to support a commitment thereunder, unless the latter are fixed by the conviction. (110)

If the justice making a summary conviction adjudges a pecuniary penalty and a distress to realize same, and in default of sufficient distress that the defendant be imprisoned, the costs of the distress and of conveying the defendant to gaol are not in the discretion of the justice, but must be included in the formal conviction. (111)

Hard labor cannot be imposed with imprisonment under the above sections, in default of payment of a fine upon summary conviction, unless imprisonment with hard labor might have been imposed, in the first instance, as part of the punishment for the offence. (112)

A warrant of commitment under the above section (739*b*) in default of paying a fine is bad, unless it includes the expenses of conveying the defendant to gaol. (113)

A warrant of commitment for want of distress, upon a summary conviction, is invalid, and will be quashed, if it recites only default in payment of the fine, and does not show, on its face, either a return of the distress warrant and that no sufficient distress was found, or that a distress was dispensed with in accordance with section 744, *post*. (113*a*)

(108) R. v. Townsend, (No. 3), 11 Can. Cr. Cas., 153.
(109) R. v. Law Bow, 7 Can. Cr. Cas., 468.
(110) *Ib.*
(111) R. v. Vantassel, (No. 1), 5 Can. Cr. Cas., 128; R. v. Vantassel, (No. 2), 5 Can. Cr. Cas., 133; Can. Ann. Dig. (1902), 121.
(112) R. v. McIver, 7 Can. Cr. Cas., 163.
(113) R. v. Gow, (alias Joe), 11 Can. Cr. Cas., 81.
(113*a*) R. v. Skinner, 9 Can. Cr. Cas., 558; Can. Ann. Dig., (1905), 98.

The provision of the *Canada Temperance Act* fixing the penalty at "not less than $50, or imprisonment for a term not exceeding one month" applies to so limit the term of imprisonment when imposed in the first instance, and not imposed for default of payment of the penalty. Where a fine is, in the first instance, imposed, the punishment, in default of payment of the fine, may be for any term not exceeding three months, under the above section (739) of the Code. (114)

Sec. 873. Sec. **742. Distress and commitment for costs.** — When any information or complaint is dismissed with costs the justice may issue a warrant of distress on the goods and chattels of the prosecutor or complainant, in form 45, for the amount of such costs; and, in default of distress, a warrant of commitment in form 46 may issue.

2. The term of imprisonment in such case shall not exceed one month.

Slightly altered, as here set forth.

Sec. 874. Sec. **743. Endorsement of warrant of distress.** —

Unchanged. (115)

Sec. 875. Sec. **744. The justice may dispense with a distress, if it would be ruinous to his family, or if defendant confesses, or it otherwise appears, that he has no goods and chattels.**

Unchanged.

Sec. 876. Sec. **745. Proceedings pending execution of distress warrant.** *Unchanged.*

Sec. 877. Sec. **746. Cumulative punishment.** *Unchanged.*

Sec. 901. Sec. **747. Tender or payment on distress warrant.**

Meaning unchanged.

SURETIES TO KEEP THE PEACE.

Sec. 959. Sec. **748. Recognizance to keep the peace in addition to or in lieu of sentence and security to keep the peace, on complaint of a person threatened with personal injury, etc.**

Meaning unchanged. (115*a*)

The application for sureties to keep the peace, — on account of threats, — should be made soon after the cause of fear, upon which it is based, has arisen, (116) and the threat complained of

(114) R. v. William Blank, 10 Can. Cr. Cas., 338.

(115) The form of Endorsement of warrant of distress is now form 47.

(115*a*) The forms to be used in proceedings under this section are forms 48, 49 and 50.

(116) Dennis v. Lane, 6 Mod., 131.

should not be merely a conditional or contingent one, to be executed in case only of the complainant doing something which he has no right to do, or which it is not necessary for him to do in the course of his business. But if it is so necessary, then a threat so made may be a proper foundation for the application for sureties. (117)

The Magistrate will form his own opinion and satisfy himself as to whether or not the facts stated amount in reality to a threat of personal violence. It is not enough that the complainant swears to an apprehension of personal violence. He should disclose facts which show that he has reasonable grounds for his fears and that the defendant's conduct is such as would make that impression upon the mind of any impartial and dispassionate man.

If the Magistrate is satisfied upon this subject, he issues either a summons or a warrant to bring the defendant before him. And the defendant, upon his appearance, is asked if he has any cause to show why he should not enter into his recognizance and give the required sureties to keep the peace.

The third paragraph of the above section, 748, expressly provides that the provisions of this Part (XV), — (relating to summary convictions), — shall apply, so far as applicable, to proceedings thereunder, and that the complainant and defendant and witnesses may be called and examined and cross-examined.

Where, on an application for sureties to keep the peace, proof is made not only of the alleged threats, but also of the commission of an assault, not alleged, the justice cannot convict the defendant of the assault, but can only order the giving of sureties as applied for. (118)

APPEAL.

Sec. 879. Sec. **749. Courts of Appeal in the various provinces.** — Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order or dismissal, the prosecutor or complainant, as well as the defendant, may appeal, —

(*a*) in the province of Ontario, when the conviction adjudges imprisonment only, to the Court of General Sessions of

(117) R. v. Mallinson, 20 L. J. M. C., 33.
(118) R. v. Deny, 20 L. J., M. C., 189.

the Peace; and in all other cases to the division Court of the division of the county in which the cause of the information or complaint arose;

(*b*) in the province of Quebec, to the Court of King's Bench, Crown side;

(*c*) in the provinces of Nova Scotia, New Brunswick and Manitoba, to the county court of the district or county where the cause of information or complaint arose;

(*d*) in the province of British Columbia, to the county court, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose;

(*e*) in the province of Prince Edward Island, to the Supreme Court;

(*f*) in the province of Saskatchewan or the province of Alberta, to the district court at the sittings thereof which shall be held nearest to the place where the cause of information or complaint arose. (*As amended by the 6 and 7 Ed. VII, c. 45, sec. 6; but sec. 7 of the Act provides that the Act shall come into force as respects either of the provinces of Saskatchewan and Alberta only upon proclamation of the Governor General*).

(*g*) in the Northwest Territories, to a stipendiary magistrate; and,

(*h*) in the Yukon Territory, to a judge of the Territorial Court.

2. In the district of Nipissing such person may appeal to the Court of General Sessions of the Peace for the county of Renfrew, when the conviction adjudges imprisonment only, and in all other cases to the Division Court of the county of Renfrew held nearest to the place where the cause of the information or complaint arose.

3. In the case of the provinces of Saskatchewan and Alberta, and of the Northwest Territories and the Yukon Territory, the judge or stipendiary magistrate hearing any

such appeal shall sit without a jury at the place where the cause of the information or complaint arose, or at the nearest place thereto where a court is appointed to be held.

Altered, as here set forth.

A person who has been convicted under the Summary Convictions Part of the Code upon his plea of guilty may, notwithstanding such plea of guilty, enter an appeal under this section. The plea of guilty concludes the accused only as to the fact that he did what is charged in the information; and he may still appeal either by way of review under section 761 *post*, or under this section 749, upon the ground that the conviction is bad in law or upon an objection to the information or summons, when such objection has been taken before the magistrate and overruled by him. (119)

Where an appeal has been taken, under section 749, from a summary conviction, and the County Court has confirmed the conviction, the defendant cannot afterwards obtain, from the convicting magistrate, a stated case to a Superior Court. — the decision in appeal of the County Court being *res judicata* between the parties as to the application for a "stated case." (120)

An appeal lies to the Court of King's Bench, in Quebec, from an order of a justice of the peace, dismissing an information or complaint on a plea of *autre fois acquit*. (121)

Sec. 880. Sec. **750. Procedure in Appeal.** — Unless it is otherwise provided in the special Act,—

(*a*) if a conviction or order is made more than fourteen days before the sittings of the court to which an appeal is given, such appeal shall be made to the next sittings of such court; but if the conviction or order is made within fourteen days of the sittings of such court, then to the second sittings next after such conviction or order;

(*b*) the appellant shall give notice of his intention to appeal by filing in the office of the clerk of the court appealed to, and serving the respondent with a copy thereof, a notice in writing setting forth with reasonable certainty the conviction

(119) R. v. Brook, 7 Can. Cr. Cas., 216; 5 Terr. L. R., 369.
(120) R. v. Townsend, 6 Can. Cr. Cas., 519; 35 N. S. R., 401.
(121) R. v. Bombardier, 11 Can. Cr. Cas., 216; Can. Ann. Dig., (1906), 92.

appealed against and the court appealed to, within ten days after the conviction complained of, and shall, at least five days before the hearing of such appeal, serve upon the respondent or his solicitor a notice setting forth the grounds of such appeal;

(*c*) the appellant, if the appeal is from a conviction adjudging imprisonment, shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance in form 51 with two sufficient sureties, before a county judge, clerk of the peace or justice of the peace for the county in which such conviction has been made, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the court; and, upon such recognizance being given, the justice, before whom such recognizance is entered into, shall liberate such person, if in custody;

(*d*) in case of an appeal from the order of a justice, pursuant to section six hundred and thirty-seven for the restoration of gold or gold-bearing quartz, or silver or silver ore, the appellant shall give security by recognizance to the value of the said property to prosecute his appeal at the next sittings of the court and to pay such costs as are awarded against him.

Slightly altered. (121*a*)

A notice of appeal from a summary conviction must state the name of the appellant, the intention to appeal, the nature of the conviction appealed against, and the sittings of court at which the appeal will be brought on. A notice of appeal purporting to be from a conviction for "looking on" while another person was playing in a common gaming house, is not a good notice of appeal from a conviction for "playing" in a common gaming house. (122)

(121*a*) The old section 880 is made into the two sections, 750 and 751.
(122) R. v. Ah Yin, (No. 1), 6 Can. Cr. Cas., 63; 9 B. C. R., 319.

A notice of appeal from a summary conviction neither addressed to nor served upon the prosecutor but addressed and served upon one only of the convicting justices of the peace, was, in the N. W. Territories, held insufficient, though it appeared that, when the notice was so served, the justice was *verbally informed* that it was for the prosecutor. (123)

In the province of Quebec it has been held that where a notice of appeal was served on the justice who tried the case instead of upon the respondent, such notice must show on its face that it is so served on the justice *for* the respondent. (124)

But, in New Brunswick, in British Columbia and in Ontario, it has been held that a notice of appeal from a summary conviction is sufficient if addressed to and served upon the magistrate or justices, without being addressed to the prosecutor. (125)

A notice of appeal from a summary conviction is not invalid because of the want of signature; and a notice of appeal wholly typewritten is a "notice in writing," under section 750(*b*). (126)

A notice of appeal from a summary conviction is invalid, if it only shews to what judge and at what place the appeal is to be made and does not state that the appeal will be made at the next sitting nor otherwise define the time of hearing. (127)

The recognizance upon an appeal from a summary conviction must be conditioned that the defendant should "*personally* appear"; and the omission of the word "personally" makes the recognizance defective. (128)

The giving of proper security upon the appeal is a statutory condition precedent to the carrying on of a successful appeal, but, notwithstanding a defect in the security, the Court has jurisdiction to award costs against the appellant on upholding the objection and dismissing the appeal upon that ground. (129)

A defendant, fined in a summary conviction proceeding, who, thereupon, pays the fine to the clerk of the court, instead of giving a recognizance or applying to the justice under clause (*c*) of the above section, (750), to fix the deposit on appeal, loses his right of appeal. (130) But payment of the fine does not bar the right of

(123) Hostetter v. Thomas, 5 Can. Cr. Cas., 10.
(124) Can. Soc. for Prev. of Cruelty to Animals v. Lauzon, 4 Can. Cr. Cas., 354.
(125) *Ex p.* Doherty, 25 N. B. R., 38; R. v. Jordan, 5 Can. Cr. Cas., 438; R. v. Davitt *et al.*, 7 Can. Cr. Cas., 514; Can. Ann. Dig., (1904), 80.
(126) R. v. Bryson, 10 Can. Cr. Cas., 398.
(127) R. v. Brimacombe, 10 Can. Cr. Cas., 168.
(128) *Ex p.* Sprague, 8 Can. Cr. Cas., 100; 36 N. B. R., 21.
(129) *Ib.*
(130) R. v. Neuberger, 6 Can. Cr. Cas., 142; 9 B. C. R., 272.

appeal when payment is made contemporaneously with the expression of intention to appeal, and under pain of distress. (130*a*)

The deposit authorized by clause (*c*) in lieu of a recognizance must include the fine; and the whole sum covering both the fine and the probable costs of appeal must be transmitted to the appellate court with the conviction. (131)

Where the condition in a recognizance on appeal from a summary conviction was for appearance and to abide the judgment, but omitted the words to "try such appeal," the appellate court will have jurisdiction to hear the appeal, if the appellant in fact appears to prosecute it. (132)

On an appeal from a summary conviction the appellant making a money deposit in lieu of recognizance must see to it that such deposit is returned by the justice into the Court to which the appeal is taken, and in default, the appeal cannot be heard.

The fact that the appellant had made such deposit is a matter of record and is not properly provable by affidavit. (133)

Giving notice of appeal is "appealing." (134)

But if the notice be for the wrong sittings, and is therefore inoperative, there has been no appeal. (135)

Where on an appeal from a summary conviction, the appellant does not make the deposit in lieu of recognizance until after the sittings of the appellate court at which he should have brought the appeal on for hearing, and for which notice was given, the appeal cannot be heard. (136)

There is no jurisdiction to award costs against the appellant in respect of the proceedings in appeal at any other sittings than the one for which notice was given. (137)

An appeal not being a common law right the conditions precedent prescribed by statute, must be strictly complied with. So that, on an appeal under the above section, 750, by several defendants, from a summary conviction, the recognizance must be that of two sureties besides the appellants; and the appeal will be quashed if the recognizance be given with only one surety. (138)

The giving of a recognizance under the above section on an appeal from a summary conviction operates as a stay of proceedings

(130*a*) R. v. Tucker, 10 O. L. R., 506; 10 Can. Cr. Cas., 217.
(131) R. v. Neuberger, *supra*.
(132) R. v. Tucker, *supra*.
(133) R. v. Gray, 5 Can. Cr. Cas., 24.
(134) R. v. Lynch, 12 Ont. R., 378; Christopher v. Croll, 16 Q. B. D., 66.
(135) R. v. Caswell, 33 U. C. Q. B., 303.
(136) McShadden v. Lachance, 5 Can. Cr. Cas., 43.
(137) *Ib.*
(138) R. v. Joseph, 6 Can. Cr. Cas., 126.

for the enforcement of any pecuniary penalty imposed by the conviction appealed from. (139)

The recognizance required by section 71 of the British Columbia Summary Convictions Act, on an appeal, to a County Court, from a summary conviction, must be given before the appeal is entered for trial; and the giving of the recognizance thereafter, but before the sitting of the Court, has been held to be insufficient. (140)

Where a provincial Legislature has provided that the provisions of the Criminal Code relating to summary convictions shall apply to appeals from summary convictions made under the laws of the provincial legislature, and has also enacted that no appeal in such cases shall lie unless an affidavit of merits be filed, such an affidavit must be taken to be a condition precedent of the appeal, in addition to those contained in section 750, notwithstanding the provisions of section 752. (141)

An ordinance of the N. W. Territories enacting that no appeal shall lie from a summary conviction under a territorial ordinance, unless the appellant shall, within the time limited for giving notice of appeal, make an affidavit, before the justice who tried the case, that he did not, by himself or otherwise, commit the offence, is not *ultra vires* of the legislative assembly. Such enactment is not inconsistent with section 880 (now 750) of the Criminal Code made applicable to the Territories. The omission to make such affidavit within the time prescribed deprives the court, to which the appeal is given, of jurisdiction, and such omission cannot be waived so as to confer jurisdiction. (142)

On an appeal from a summary conviction, if it appear, on the face of the proceedings, that the statutory conditions precedent have not been complied with, the court must dismiss the appeal, although the point is not raised by the respondent. (143)

The grounds or reasons of appeal must under the above section 750 (*b*) be served five clear days before the hearing; or, if served later, the appeal is not lodged in due form, and should be dismissed. (144)

Sec. 880. Sec. **751. Hearing of Appeal.** The Court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either

(139) Simington v. Colbourne, 4 Can. Cr. Cas., 367.
(140) R. v. King, 4 Can. Cr. Cas., 128.
(141) R. v. McLeod, (No. 1), 6 Can. Cr. Cas. 23.
(142) Cavanagh v. McInnoyle, 6 Can. Cr. Cas., 88.
(143) R. v. Dolliver Mountain Mining & Milling Co., 10 Can. Cr. Cas., 405.
(144) R. v. Thornton, 11 Can. Cr. Cas., 71. And see R. v. Dolliver Mountain Mining & Milling Co., *supra*.

party, including costs of the court below, as seems meet to the court, and, in case of the dismissal of an appeal by the defendant and the affirmance of the conviction or order, shall order and adjudge the appellant to be punished according to the conviction or to pay the amount adjudged by the said order, and to pay such costs as are awarded, and shall, if necessary, issue process for enforcing the judgment of the court.

2. In any case where a deposit was made on appeal previously to the twentieth day of July in the year of our Lord one thousand nine hundred and five, if the conviction or order is affirmed, the court may order that the sum thereby adjudged to be paid, together with the costs of the conviction or order and the costs of appeal, shall be paid out of the money deposited, and that the residue, if any, shall be repaid to the appellant; and if the conviction or order is quashed, the court shall order the money to be repaid to the appellant.

3. The Court to which such appeal is made shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one sitting to another, or others, of the said Court.

4. Whenever any conviction or order is quashed on appeal, the Clerk of the Peace or other proper officer shall forthwith endorse, on the conviction or order, a memorandum that the same has been quashed.

5. Whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under the hand of the Clerk of the Peace, or of the proper officer having the custody of the same, be sufficient evidence, in all courts and for all purposes, that the conviction or order has been quashed. (144a)

(144a) The old section 880 is made into the two new sections 750 and 751.

If, when the appeal comes up for hearing, the appellant be surprised by the production of a conviction different from the copy previously delivered to him, he may apply for time, and the appeal should be adjourned. (145)

Sec. 881. Sec. **752. Court appealed to absolute judge of facts and of law.** When an appeal against any summary conviction or order has been lodged in due form, and in compliance with the requirements of this part, the Court appealed to shall try, and shall be the absolute judge, as well of the facts as of the law, in respect to such conviction or order.

2. Any of the parties to the appeal may call witnesses and adduce evidence, whether such witnesses were called or evidence adduced at the hearing before the Justice or not, either as to the credibility of any witness, or as to any other fact material to the inquiry.

3. Any evidence taken before the justice at the hearing below, certified by the Justice, may be read on such appeal, and shall have the like force and effect as if the witness was there examined, if the Court appealed to is satisfied by affidavit or otherwise, that the personal presence of the witness cannot be obtained by any reasonable efforts.

Slightly changed in the wording.

Sec. 882. Sec. **753. Appeals on matters of form.** *Unchanged.*

Sec. 883. Sec. **754. Judgment to be upon the merits.**

Meaning unchanged.

An appeal from a summary conviction is in Ontario to be taken to the Court of General Sessions of the Peace sitting without a jury; and section 881 (now 752) constituting such Court the absolute judge as well of the facts as of the law in respect of the conviction or decision appealed against is *intra vires* of the Dominion Parliament. (146)

A statutory provision that the appellate court shall try the appeal without a jury is one relating to the procedure and not to the constitution of the Court. (147)

The decision of the Court of General Sessions or County Court in appeal from a summary conviction has been held to be final and

(145) R. v. Allen, 15 East, 346.
(146) R. v. Malloy, 4 Can. Cr. Cas., 116.
(147) *Ib.*

conclusive, and that a superior court has no jurisdiction to interfere by *habeas corpus*. (148)

A county court judge who has allowed an appeal from a summary conviction under a statutory provision similar to section 754 of the Code, and has quashed the conviction, as invalid on its face, without hearing further evidence and trying the case *de novo*, cannot be compelled by *mandamus* to re-open the appeal for the purpose of hearing fresh evidence. (149)

Sec. 884. Sec. **755. Costs when appeal not prosecuted.**

Unchanged in meaning.

It has been held that, where an appeal from a summary conviction is entered and prosecuted, but is dismissed on the ground that it was not lodged in due form, costs cannot be allowed against the appellant, and that the above section, 755, only applies when the appellant fails to proceed with his appeal, without abandoning it according to law. (150)

It has also been held, however, that the court to which an appeal might properly be taken from a summary conviction has jurisdiction to award costs to the respondent on quashing an appeal for want of jurisdiction through a defect in the notice of appeal. (151)

Sec. 885. Sec. **756. Proceedings when appeal fails.**

Unchanged.

Sec. 888. Sec. **757. Conviction to be transmitted to Appeal Court.** — Every Justice before whom any person is summarily tried, shall transmit the conviction or order to the Court to which the appeal is by this Part given, in and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the Court.

2. The conviction or order shall be presumed not to have been appealed against, until the contrary is shown.

3. Upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved

(148) R. v. Beamish 5 Can. Cr. Cas., 388.
(149) Strang v. Gellatly, 8 Can. Cr. Cas., 17.
(150) R. v. Ah Yin, (No. 2), 6 Can. Cr. Cas., 66.
(151) R. v. the Dolliver Mountain Mining & Milling Co., *supra*.

to be a true copy, shall be sufficient evidence to prove a conviction for the former offence.

Altered as here set forth.

4. In any case when a conviction or order is required by this Part after appeal to be enforced by any justice the clerk of the court to which the appeal was had or other proper officer shall remit such conviction or order and all papers therewith sent to the court of appeal excepting any notice of intention to appeal and recognizance to such justice to be by him proceeded upon as in such case directed by this Part.

Altered as here set forth.

Sec. 897. Sec. **758. Order as to costs.** *Unchanged.*

Sec. 898. Sec. **759. Recovery of costs.** (152)

Sec. 899. Sec. **760. Abandonment of appeal.** *Unchanged.*

STATING A CASE.

Sec. 900. Sec. **761. Statement of case by justices for review.** — Any person aggrieved, the prosecutor or complainant as well as the defendant, who desires to question a conviction, order, determination or other proceeding of a Justice under this part, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such Justice to state and sign a case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the Justice declines to state the case, may apply to the Court for an order requiring the case to be stated.

2. The application shall be made and the case stated within such time and in such manner as is, from time to time, directed by rules or orders under section 576.

Taken from paragraphs 2 and 3 of the old section 900.

A case will not be granted upon a question of fact, but only

(152) Meaning unchanged; but the form of certificate of costs not having been paid is now form 52; and the forms of distress and of commitment are forms 53 and 54.

upon a question of law. The question as to the weight or sufficiency of the evidence is a question of fact; (153) but a question as to whether there is any evidence at all, is a question of law. (154)

The question of law to be decided, in order to be the subject of a case stated, must be one which strictly arises on the trial. (155)

Only questions of law which have first been raised before the magistrate, and which are specified in the formal "case" he has stated to the appellate court, are to be determined upon a stated case. (156)

Where, by rules of court a written request is required for a case stated by justices, such request must be in strict accordance with the above section 761. And where, by such rules of Court, the request in writing must be made within a limited time and must ask that the facts of the case and the grounds on which the proceedings are questioned be set forth in the case stated, a request which is in form a mere request to state and sign a case under the provisions of sub-section 2 of the above section is insufficient. Objection may be taken on the hearing of the stated case to the invalidity of the request therefor, and, if allowed, the appeal must be quashed for want of jurisdiction. (157)

In the absence, in any province, of rules of court fixing the time within which a case shall be stated under the above section, 761, the proceeding by way of stated case may be prosecuted within a reasonable time after the order or ruling in question. The time limited for appeals from summary convictions has no application to a stated case. (158)

Sec. 900. Sec. **762. Recognizance by applicant for a case.** — The appellant at the time of making such application, and before a case is stated and delivered to him by the Justice, shall in every instance, enter into a recognizance before such Justice or some other Justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the Justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of the Court and pay

(153) R. v. McIntyre, 3 Can. Cr. Cas., 413; R. v. Lloyd, 19 O. R., 352.

(154) R. v. Lloyd, *supra*.

(155) R. v. Faderman, 1 Den., 565; Morin v. R., 18 S. C. R., 407 But see, (as to discretion of court to hear an objection not taken before the Justice), Simpson v. Locke, 7 Can. Cr. Cas., 294.

(156) R. v. Nugent, 9 Can. Cr. Cas., 1.

(157) R. v. Earley, (No. 2), 10 Can. Cr. Cas., 336.

(158) R. v. Ferguson, 11 Can. Cr. Cas., 277; 12 Ont. L. R., 411.

such costs as are awarded by the same; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to.

2. The appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice, or such other justice as is then sitting, within ten days after the judgment of the court has been given, to abide such judgment, unless the judgment appealed against is reversed.

Taken from paragraph 4 of the old section.

A cash deposit cannot be accepted in lieu of recognizance on an appeal by way of "stated case" from a summary conviction. The recognizance required by this section, 762 is a condition precedent to the jurisdiction of the court to hear the appeal. (159)

Sec. 900. Sec. **763. Refusal to state a case.** — If the justice is of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall on the request of the applicant sign and deliver to him a certificate of such refusal: Provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction of the Attorney General of Canada, or of any province.

Taken from paragraph 5 of the old section 900.

Sec. 900. Sec. **764. Application to compel the stating of a case.** — Where the justice refuses to state a case, it shall be lawful for the applicant to apply to the court, upon an affidavit of the facts, for a rule calling upon the justice, and also upon the respondent, to show cause why such case should not be stated; and such court may make such rule absolute, or discharge the application, with or without payment of costs, as to the court seems meet.

2. The justice upon being served with such rule absolute, shall state a case accord-

(159) R. v. Geiser, 5 Can. Cr. Cas., 154.

ingly, upon the appellant entering into such recognizance as hereinbefore provided.

Taken from paragraph 6 of the old section 900.

The case should be so stated as to contain every question to be submitted for the opinion of the court: and it should be signed by the justice.

The case should be drawn up by the party asking for it; and a notice of a time and place for settling it should be served; and, when the case has been settled, a copy of it, as settled, together with notice of hearing thereon, should be served on the respondent.

The provision, in section 87 of the British Columbia *Summary Convictions Act*, that the Appellant shall, within three days after receiving the case stated, transmit it to the District Registry, is a condition precedent to the jurisdiction of the Court to hear the appeal. (160)

Sec. 900. Sec. **765. Hearing of Case.** The Court to which a case is transmitted shall hear and determine the question or questions of law arising thereon, and shall thereupon affirm, reverse or modify the conviction, order or determination in respect of which the case has been stated, or remit the matter to the justice with the opinion of the court thereon, and may make such other order in relation to the matter, and such orders as to costs, as to the court seems fit; and all such orders shall be final and conclusive upon all parties.

2. No justice who states and delivers a case shall be liable to any costs in respect or by reason of such appeal against his determination.

Taken from paragraph 7 of the old section 900.

Sec. 900. Sec. **766. Amendment of case.** — The court for the opinion of which a case is stated, shall have power, if it thinks fit, to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it has been amended.

2. The authority and jurisdiction of the

(160) Cooksley v. Nakashiba, 5 Can. Cr. Cas., 111.

court for the opinion of which a case is stated may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers and as well in vacation as in term-time.

Taken from paragraphs 8 *and* 9 *of the old section* 900.

Sec. 900. Sec. **767.** **Enforcement by justice of confirmed conviction.** — After the decision of the court in relation to any case stated for their opinion, the justice in relation to whose determination the case has been stated, or any other Justice exercising the same jurisdiction, shall have the same authority to enforce any conviction, order or determination which has been affirmed, amended or made by such court as the justice who originally decided the case would have had to enforce his determination if a case had not been stated.

2. If the court deems it necessary or expedient any order of the court may be enforced by its own process.

Taken from paragraphs 10 *and* 11 *of the old section* 900.

Sec. 900. Sec. **768.** **No certiorari required.** — No writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated as aforesaid, for obtaining the judgment or determination of a Superior Court on such case.

Taken from paragraph 12 *of the old section* 900.

Sec. 900. Sec. **769.** **Statement of case precludes appeal. No case to be stated when no appeal allowed.** — Every person for whom a case is stated as aforesaid in respect of any determination of a justice from which he is entitled to an appeal under section 749, shall be taken to have abandoned his said right of appeal finally and conclusively and to all intents and purposes.

2. Where, by any special Act, it is provided that there shall be no appeal, from any

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conviction or order, no proceedings shall be taken to have a case stated or signed as aforesaid in any case to which such provision as to appeal in such special Act applies.

Taken from paragraphs 14 *and* 15 *of the old section* 900.

If the point has already been brought before and been decided by the Court, it is *res judicata*, and will not be again entertained on a case stated. (161)

The appellant, by obtaining a case to be stated, elects that mode of appeal and cannot revert to any other mode of appeal. (162)

On the quashing of a conviction, costs are given against the prosecutor. (163)

Where an appeal, by way of stated case, is abandoned or dropped, costs are ordered against the appellant. (164)

FEES.

Sec. 871. Sec. **770. Fees of justices or their clerks, of constables and of witnesses.** *Unchanged.*

PART XVI.

SUMMARY TRIAL OF INDICTABLE OFFENCES.

Interpretation.

Sec. 782. Sec. **771. Definitions of "Magistrate", "Common gaol", and "Property".** — In this Part, unless the context otherwise [illegible], —

(*a*) '**magistrate**' means and [illegible]

(i) in the provinces of Ontario, Quebec and Manitoba, any recorder, judge of a county court if a justice of the peace, commissioner of police, judge of the sessions of the peace, and police magistrate, district magistrate or other functionary or tribunal, invested by the proper legislative authority with power to do alone such acts as are

(161) R. v. St. John, 2 Jur., 46.
(162) Cooksley v. Toomaten Oota, 5 Can. Cr. Cas., 26.
(163) Venables v. Hardman, 1 E. & E., 79.
(164) Crowther v. Boult, 13 Q. B. D., 680.

usually required to be done by two or more justices, and acting within the local limits of his or of its jurisdiction,

(ii) in the provinces of Nova Scotia and New Brunswick, any recorder, judge of a county court, stipendiary magistrate or police magistrate, acting within the local limits of his jurisdiction, and any commissioner of police and any functionary, tribunal or person invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace,

(iii) in the provinces of British Columbia and Prince Edward Island, any two justices sitting together, and any functionary or tribunal having the powers of two justices,

(iv) in the province of Saskatchewan or Alberta, a judge of any district court or any two justices or any police magistrate or other functionary or tribunal having the powers of two justices, and acting within the local limits of his or its jurisdiction,

(v) in the Northwest Territories, any stipendiary magistrate, any two justices sitting together and any functionary or tribunal having the powers of two justices,

(vi) in the Yukon Territory, any judge of the Teritorial Court, any two justices sitting together and any functionary or tribunal having the powers of two justices,

(vii) in all the provinces, where the defendant is charged with any of the offences mentioned in paragraphs (*a*) and (*f*) of section seven hundred and seventy-three, any two justices sitting together;

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(*b*) '**the common gaol** or other place of confinement,' in the case of any offender whose age at the time of his conviction does not, in the opinion of the magistrate, exceed sixteen years, includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which by the law of that province the offender may be sent; and,

(*c*) '**property**' includes everything within the meaning of "valuable security" as defined by this Act.

2. In any case where the value of any valuable security is necessary to be determined it shall be reckoned in the manner prescribed by section four.

Altered as here set forth, and as amended by the 6 and 7 Ed. VII, c. 45, sec. 6).

One alteration is the making of the first part of paragraph (v) of subsection (*a*) of the old section into paragraph (vii) of the new section; while the remainder of paragraph (v) of subsection (*a*) of the old section is made into a new section, — 797, *post* ; which new section provides that when any of the offences mentioned in paragraph (*a*) or paragraph (*f*) of section 773, *post*, is tried in any province, under the present Part, — XVI, — an appeal lies from a conviction for the offence, in the same manner as from summary convictions under Part XV, *ante*, with this exception, that, in the province of Saskatchewan or the province of Alberta, there is no appeal if the conviction be made by a judge of a Superior court.

A district magistrate in the province of Quebec may hold a summary trial under this Part, but only for the offences set out in section 773, *post*, and he does not possess the extended jurisdiction given to police and stipendiary magistrates by section 777, *post*. (165)

A district magistrate in the province of Quebec may hold a "speedy trial" under Part XVIII *post;* but his jurisdiction in that respect, does not attach until the accused has either been committed for trial at preliminary enquiry, or has been bailed to appeal for trial under section 696, *ante*. (166)

(165) R. v. Breckenridge, 7 Can. Cr. Cas., 116; Que. Jud. Rep., 12 K. B., 474.
(166) *Ib.*

The statutory conditions upon which jurisdiction depends cannot be waived by the accused. (167)

A justice of the peace, not having the powers of two justices, has no jurisdiction to hold a summary trial under this Part. (168)

APPLICATION OF PART.

Sec. 808. Sec. **772. Part XVII not affected.** — Nothing in this Part shall affect the provisions of Part XVII, and this Part shall not extend to persons punishable under that Part, so far as regards offences for which such persons may be punished thereunder. (169)

JURISDICTION.

Sec. 783. Sec. **773. Offences dealt with under this Part.** — Whenever any person is charged before a magistrate, —

(*a*) with theft or obtaining money or property by false pretenses, or unlawfully receiving stolen property, where the value of the property does not, in the judgment of the magistrate, exceed ten dollars; or

(*b*) with attempt to commit theft; or

(*c*) with *unlawfully wounding* or *inflicting grievous bodily harm* upon any other person, either with or without a weapon or instrument; or

(*d*) with *indecent* assault upon a male person whose age does not, in the opinion of the magistrate, exceed fourteen years when such assault is of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other Part; or with *indecent* assault upon a female, not amounting, in the magistrate's opinion, to an assault with intent to commit a rape; or

(167) *Ib.*
(168) R. v. Coté, 8 Can. Cr. Cas., 393.
(169) Taken from the latter half of the old section 808.

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(*e*) with assaulting or obstructing any public or peace officer *engaged in the execution of his duty*, or any person acting in aid of such officer; or

(*f*) with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy house; or

(*g*) with any offence under section 235;

the magistrate may, subject to the subsequent provisions of this Part, hear and determine the charge in a summary way.

Altered as here set forth. (170)

A magistrate, upon the summary trial before him of a prisoner on a charge, under the above section, paragraph (*a*), of having committed theft, may convict him of the offence mentioned in paragraph (*b*), of having attempted to commit theft. (171)

It has recently been held, — disapproving of R. v. France, (172), and approving of *Ex parte* John Cook, (173), — that the term "disorderly house", used in clause (*f*) of the above section, is to be governed by the statutory definition of that term, given in section 228, *ante*, and that it includes, not only a common bawdy house, but also a common gaming house and a common betting house, so that a police magistrate has jurisdiction to summarily try a charge of keeping a common gaming house, without the consent of the accused. (174)

A conviction upon a summary trial by two justices, under the above sections 771 and 773, for keeping a disorderly house at a specified address, from the 3rd of May to the 3rd of November, is a bar, under a plea of *autrefois* convict, at a speedy trial of a charge under section 228 of keeping such a house on the 3rd of November only. (175)

Where the name of the accused, the place of the offence and the character of the offence are the same in the certificate of conviction produced in proof of a plea of *autrefois* convict and in the charge then being tried, it will be presumed that the accused is the party named in such certificate, without parol evidence of identity. (176)

The extended jurisdiction by which magistrates, etc., are em-

(170) The principal alterations are in subsections (*c*) and (*d*).
(171) R. v. Morgan, 5 Can. Cr. Cas., 63.
(172) R. v. France, 1 Can. Cr. Cas., 321.
(173) *Ex p.* John Cook, 3 Can. Cr. Cas., 72.
(174) R. v. Flynn, 9 Can. Cr. Cas., 550.
(175) R. v. Clark, 9 Can. Cr. Cas., 125.
(176) *Ib.*

powered to summarily try the offence of being an inmate of a house of ill-fame and other offences, and to impose six months imprisonment and a fine not exceeding $100, is not restricted as to that offence by the fact that if the accused were prosecuted under the "summary convictions" clauses of being a "vagrant," by reason of being such inmate, the fine could not have exceeded $50 in addition to six months imprisonment. (177)

A prosecution against the keeper of a common bawdy house may be brought either by indictment or under the *Summary Trials* procedure, or the keeper may be charged as a vagrant under the *Summary Convictions* procedure, and neither the provision for summary trial nor that for summary conviction abrogates the right of the Crown to bring an indictment. The different methods of procedure with the varying penalties, dependent upon the class of tribunal selected, are not inconsistent but are alternative. (178)

Sec. 784. Sec. **774. Absolute jurisdiction of magistrate in respect to houses of ill-fame.** — The jurisdiction of such Magistrate is absolute in the case of any person charged with keeping or being an inmate or habitual frequenter of any disorderly house, house of illfame or bawdy-house, and does not depend on the consent of the person charged to be tried by such Magistrate, nor shall such person be asked whether he consents to be so tried.

2. The provisions of this part shall not affect the absolute summary jurisdiction given to any justice or justices in any case by any other Part of this Act. (179)

Sec. 784. Sec. **775. Absolute jurisdiction in Quebec and Montreal as to seafaring person.** — The jurisdiction of the Magistrate is absolute in the case of any person who, being a seafaring person and only transiently in Canada and having no permanent domicile therein, is charged, either within the city of Quebec as limited for the purpose of the police ordinance, or within the city of Montreal as so limited, or in any other seaport city or town in Canada where there is such Magistrate,

(177) R. v. Roberts, 4 Can. Cr. Cas., 255.

(178) R. v. Sarah Smith, 9 Can. Cr. Cas., 338; Can. Ann. Dig., (1905), 110.

(179) The three paragraphs (slightly altered of the old section 784) are made into these three new sections, 774, 775 and 776.

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with the commission therein of any of the offences in this Part previously mentioned, and also in the case of any other person charged with any such offence on the complaint of any such seafaring person whose testimony is essential to the proof of the offence.

2. Such jurisdiction does not depend on the consent of any such person to be tried by the magistrate nor shall such person be asked whether he consents to be so tried. (179)

Sec. 784. Sec. **776. Jurisdiction absolute in certain provinces.** The jurisdiction of the magistrate in the provinces of British Columbia, Prince Edward Island, Saskatchewan and Alberta and in the North West Territories and Yukon Territory under this Part, is absolute, without the consent of the party charged, except in cases coming within the provisions of section 777 and except in cases under sections 782 and 783, where the person charged is not a person who, under section 775, can be tried summarily without his consent. (179)

Sec. 785. Sec. **777. Summary trial, in Ontario and in cities and towns elsewhere, of certain cases.** — If any person is charged, in the province of Ontario, before a police magistrate, or before a stipendiary magistrate in any county district or provisional county in such province with having committed any offence for which he may be tried at a court of general sessions of the peace, or if any person is committed to a gaol in the county, district or provisional county, under the warrant of any justice, for trial on a charge of being guilty of any such offence, such person may, with his own consent, be tried before such magistrate, and may, if found guilty, be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the court of general sessions of the peace.

2. This section shall apply also to police and stipendiary magistrates of cities and

incorporated towns in every other part of Canada, and to recorders where they exercise judicial functions: Provided that when the magistrate has jurisdiction by virtue of this section only, no person shall be summarily tried thereunder without his own consent.

3. Sections seven hundred and eighty and seven hundred and eighty-one do not extend or apply to cases tried under this section. *Slightly changed, as here set forth.*

It has been held, in New Brunswick, that a police magistrate holding a commission for a county with a statutory jurisdiction in a city situate in such county is not a police magistrate of a city within the meaning of subsection 2 of this section, and that such county police magistrate has no jurisdiction to hold a "summary trial" under this Part (XVI) of the Code. (180)

This section, — 777, — comprises the summary trials of indictable offences (triable at General Sessions) other than those specifically mentioned in section 773 *ante*.

It has been held in New Brunswick that, although there are no courts of General Sessions except in Ontario, subsection 2 of this section, 777, is not, therefore, inoperative, but gives to a city or town magistrate, in other parts of Canada, the jurisdiction created for Ontario by the first paragraph of the section: it being also held that it is within the legislative powers of a provincial legislature to enact that every police magistrate shall constitute a court with such jurisdiction as the Dominion Parliament confers or purports to confer or may hereafter confer upon him. (181)

A person accused of perjury may, with his own consent, be summarily tried before a police magistrate; and where a defendant sought and consented to be tried summarily under section 785, (now section 777), pleading "not guilty," and the magistrate heard the evidence, adjudicated summarily and dismissed the charge, it was held that the magistrate was right in afterwards refusing to bind the prosecutor over to prosecute an indictment against the defendant under section 688 of the Code, *ante;* for, (see section 784 *post*), the magistrate has the right to determine before the defence is made whether he will try the case summarily or not. (182)

A police magistrate of a city or town may, in a summary trial

(180) R. v. Benner, 8 Can. Cr. Cas., 398; 35 N. B. R., 632.

(181) *In re* Vaneini, (No. 1), 24 C. L. T., 205; 40 C. L. J., 466. *Aff.* (In Appeal, by the Supreme Court of Canada), in *Re* Vaneini, (No. 2), 8 Can. Cr. Cas., 228; 34 Can. S. C. R., 621.

(182) R. v. Burns, (No. 2), 4 Can. Cr. Cas., 330; 1 Ont. L. R., 341.

for assault, under section 777, impose the same punishment as is permitted on a conviction for that offence under indictment.(183)

PROCEDURE.

Sec. 786. Sec. **778. Proceedings on arraignment of accused.** — Whenever the Magistrate, before whom any person is charged as aforesaid, proposes to dispose of the case summarily under the provisions of this Part, such Magistrate, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the person charged for any statement which he wishes to make, shall state to such person the substance of the charge against him,

2. If the charge is not one that can be tried summarily without the consent of the accused, the magistrate shall then address to him these words, or words to the like effect: 'Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a Jury at the (*naming the court at which it can probably soonest be tried*)'

3. If the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the Magistrate to try it does not depend on the consent of the accused, the Magistrate shall reduce the charge to writing and read the same to such person, and shall then ask him whether he is guilty or not of such charge.

4. If the person charged confesses the charge, the Magistrate shall then proceed to pass such sentence upon him as by law may be passed in respect to such offence, subject to the provisions of this Act; but if the person charged says that he is not guilty, the Magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the Magistrate shall inquire of the person charged whether

(183) R. v. Ridehaugh, 7 Can. Cr. Cas., 340; 39 C. L. J., 488.

he has any defence to make to such charge, and if he states that he has a defence the Magistrate shall hear such defence, and shall then proceed to dispose of the case summarily. *Slightly altered.*

The magistrate, in putting the accused to his election, must expressly name the court at which the charge can probably be soonest heard; and the fact that the accused is represented by counsel who was probably aware of the time of the next jury sittings does not abridge the magistrate's statutory duty to, himself, inform the accused; nor is the right of the accused to be informed by the magistrate as to the next jury court waived, by a statement of his counsel that he elects to be then and there tried by the magistrate. (184)

A consent to "summary trial," under the above section, when given, without the option of a jury trial being expressly stated to the accused, or without the accused being specifically informed of his right to a trial by jury, is invalid; and a prisoner held upon a conviction based upon such consent must be discharged upon *habeas corpus*. (185)

When the magistrate merely asks the accused, "How do you wish to be tried, — before me or before a jury?" the provisions of the above section are not complied with; and the magistrate is without jurisdiction to hold a "Summary Trial," although the accused, in answer, consents to be tried by the magistrate. (186)

In a Nova Scotia case, in which the defendants were convicted, before a magistrate having the powers of two justices, of the offence, — (mentioned in the old section 144, subsection 2 (*a*), now section 169 of the Code), — of resisting a peace officer in the execution of his duty, it was held that such magistrate can try the charge only under the Part relating to "summary trials of indictable offences," and not under the Part relating to "summary convictions," and that, in order for such magistrate to try the charge, the accused must elect that mode of trial under section 778; and an order was made discharging the prisoners. (187)

Upon a summary trial under this Part, where the consent of the accused is essential to the jurisdiction, the charge upon which the accused has elected that mode of trial cannot be enlarged or extended by amendment, without giving him the right to re-elect. (188)

(184) R. v. Walsh, 40 C. L. J., 270; 8 Can. Cr. Cas., 101; 7 Ont. L. R., 149.

(185) R. v. Shepherd, 6 Can. Cr. Cas., 463; R. v. Conway, 7 Can. Cr. Cas., 129.

(186) R. v. Walsh, *supra*.

(187) R. v. Carmichael, 7 Can. Cr. Cas., 167; R. v. Crossen, 3 Can. Cr. Cas., 152, *followed*.

(188) R. v. Walsh, *supra*.

It has been held in Nova Scotia that an information charging the accused with being "the keeper of a disorderly house, namely, a *common* bawdy house," must be taken to be a charge under section 198 (now section 228) of the Code for the indictable offence of keeping a common bawdy house, and that it is not cognizable under the special jurisdiction given to magistrates by section 773 (*f*), because not laid in the exact language of the latter section, and that such charge could not be summarily tried by a city stipendiary magistrate without the consent of the accused under section 775. (189)

Upon a summary trial with consent upon a charge of assault occasioning bodily harm, the magistrate may convict of the lesser offence of common assault. Sec. 713 (now 951) of the Code applies to summary trials as well as to trials upon an indictment. The word "count" as used in the old section 3 (l), — now section 2 (16), — and in section 951 includes an information before a justice for an indictable offence. (190)

The offence of carnal knowledge of a girl under fourteen includes the lesser offence of indecent assault; and a police magistrate trying an accused, with his consent, summarily, upon the greater charge of carnal knowledge, has the same power to convict of the lesser offence as a Court of General Sessions would have upon a trial under an indictment. (191)

Sec. **779. Proceedings when accused is a minor of about sixteen.** Whenever the person charged appears to be of, or about, or under the age of sixteen years, and is not represented by counsel present at the time, the magistrate shall not proceed under the last preceding section without first asking the person charged what his age is.

2. If such person then states his age as being sixteen years or less, the magistrate shall defer any further action, and shall at once cause notice to be given to the parent or parents of such person, living in the province, if any, or if he has no such parents, or if his parents are unknown, then to the guardian or householder, if any, with whom he ordinarily resides, of such person having

(189) R. v. Keeping, 4 Can. Cr. Cas., 494.

(190) R. v. James Coolen, 7 Can. Cr. Cas., 522; R. v. Frank Coolen, 8 Can. Cr. Cas., 157. See R. v. Oliver, 30 L. J., M. C., 12; R. v. Morgan, (No. 2), 5 Can. Cr. Cas., 272.

(191) R. v. Cameron, 4 Can. Cr. Cas., 385.

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been so charged, and of the time and place when such person will be called on to make his election as to whether he will be tried by the said magistrate.

3. Such notice shall allow reasonable time for the said parents, guardian or householder to be present and advise the said person charged before he is called on to so elect.

4. At the time fixed by such notice, or if it appears to the satisfaction of the magistrate that there is no person for whom notice is provided as aforesaid, or that all reasonable means to give such notice have been taken without success, then, at the earliest convenient time, the magistrate shall proceed as in the last preceding section provided.

5. If any person notified as aforesaid is present at the time so fixed, the magistrate shall afford him an opportunity to advise the person charged before he is called upon to elect.

6. The notice provided for by this section may be given by registered letter, if the person to be notified does not reside in the city, town or municipality where the proceedings are had. *Added.*

Sec. 787. Sec. 780. **Punishment on conviction of offences under (a) or (b) of section 773.** In the case of an offence charged under paragraph (*a*) or (*b*) of section 773, the magistrate, after hearing the whole case for the prosecution and for the defence shall, if he finds the charge proved, convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labor, for any term not exceeding six months. *Slightly altered.*

Sec. 788. Sec. 781. **Punishment on conviction of an offence under (c), (d), (e), (f), (g), (h), or (i) of section 773.** In any case summarily tried under paragraphs (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), or (*i*) of section 773, if the magistrate finds the charge proved, he may convict the person charged and commit him to the common gaol or other place of confinement, there

to be imprisoned, with or without hard labour, for any term not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment not exceeding the said sum and term.

2. Such fine may be levied by warrant of distress under the hand and seal of the Magistrate, or the person convicted may be condemned, in addition to any other imprisonment on the same conviction, to be committed to the common gaol or other place of confinement for a further term not exceeding six months, unless such fine is sooner paid.

Slightly altered, as here set forth.

Where, — under the 32-33 Vic., c. 32, sec. 17, (which was to the same effect as section 781 of the Criminal Code), — a prisoner was condemned to both fine and imprisonment, it was decided that hard labor could not be added to the sentence. (192)

A conviction, (upon a summary trial of an indictable offence), whereby it is adjudged that, in addition to the imprisonment ordered, the accused "do pay a fine of $5, to be paid and applied according to law," is invalid, for want of any adjudication of forfeiture of the fine, and the accused imprisoned under a warrant of commitment based thereon should be discharged. (193)

Where the sentence imposed upon a summary trial by consent before a city stipendiary magistrate, for common assault, was, in the first instance, three months imprisonment without mention of hard labor and the minute of adjudication did not include hard labor, a formal conviction, including hard labor, and a commitment thereon in similar terms are invalid, and the accused will be discharged on *habeas corpus*. (194)

Where a conviction, made by a City Police or Stipendiary Magistrate, for being an inmate of a disorderly house follows the Code form WW, (now form 32), and does not recite that the accused was charged before him in the words of form QQ, (now form 55), the inference is that the prosecution is brought under the vagrancy clauses of the Code, and not under the *Summary Trials* of Indictable Offences Procedure. (195)

(192) *Ex p.* Lefebvre, and *Ex p.* Dufresne, 3 L. N., 253.

(193) R. v. Buttress, 3 Can. Cr. Cas., 536. And see R. v. Orowell, 2 Can. Cr. Cas., 34.

(194) *Ex p.* Carmichael, 8 Can. Cr. Cas., 19; Can. Ann. Dig., (1904), 71.

(195) R. v. Carter *et al.*, 5 Can. Cr. Cas., 401.

Where the proceedings are taken under the *Summary Convictions* Procedure, a conviction inflicting a punishment in excess of that authorized on summary conviction cannot be supported, — in *habeas corpus* proceedings, — as a conviction on summary trial of an indictable offence, under which the punishment inflicted is authorized, notwithstanding that the magistrate was one authorized to hold a summary trial of an indictable offence, and that the offence was of the class for which the consent to trial is dispensed with by statute. (196)

Sec. 789. Sec. **782. Procedure when the theft, or false pretense or receiving is in respect of property exceeding ten dollars.** When any person is charged before a Magistrate with theft or with having obtained property by false pretenses, or with having unlawfully received stolen property, and the value of the property stolen, obtained or received exceeds ten dollars, and the evidence in support of the prosecution is, in the opinion of the magistrate, sufficient to put the person on his trial for the offence charged, such magistrate, if the case appears to him to be one which may properly be disposed of in a summary way, shall reduce the charge to writing, and shall read it to the said person, and, unless such person is one who, under section 775, can be tried summarily without his consent, shall then put to him the question mentioned in section 778, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual course.

Slightly altered, as here set forth.

Sec. 790. Sec. **783. Punishment on plea of guilty; and as to plea of not guilty.** If the person charged as mentioned in the next preceding section consents to be tried by the Magistrate, the Magistrate shall then ask him whether he is guilty or not guilty of the charge, and if such person says that he is guilty, the Magistrate shall then cause a plea of guilty to be entered upon the proceedings, and sen-

(196) *Ib.*

tence him to the same punishment as he would have been liable to if he had been convicted upon indictment in the ordinary way; and if he says that he is not guilty, he shall be remanded to jail to await his trial before him in the usual course. *Unchanged.*

A magistrate under section 771, *ante*, authorized to hold a summary trial by consent for theft of property exceeding $10 in value, but not being a police or stipendiary magistrate of a city or town having the additional jurisdiction conferred by section 777, *ante*, must first proceed with the charge as on a preliminary enquiry until it is ascertained whether or not the evidence for the prosecution is sufficient to put the accused on his trial. If the magistrate is then of opinion that the evidence for the prosecution is sufficient to put the accused on his trial, and that the case is a proper one to be disposed of summarily, he may proceed with a summary trial under the above section 782. (196*a*)

Where, on a charge of theft of property of a value exceeding $10, the accused consented to a summary trial before a city stipendiary magistrate, in Nova Scotia, it was held that such magistrate was not bound to remand the accused to gaol, upon his pleading "not guilty," but that, apart from the above section, (783), he had jurisdiction, under section 777, *ante*, to try the charge, and on conviction, to impose the same punishment as might be imposed in Ontario by a Court of General Sessions. (197)

Sec. 791. Sec. **784. Magistrate may decide not to proceed summarily.** *Unchanged.*

Sec. 792. Sec. **785. Election of trial by jury to be stated on warrant of committal.** If, when his consent is necessary, the person charged elects to be tried before a jury, the magistrate shall proceed to hold a preliminary inquiry as provided in Parts XIII. and XIV., and if the person charged is committed for trial, shall state in the warrant of committal the fact of such election having been made.
Slightly altered, as here set forth.

Sec. 793. Sec. **786. Full defence allowed.** *Unchanged.*

Sec. 794. Sec. **787. Proceeding in open court.** *Unchanged.*

Sec. 795. Sec. **788. Procuring attendance of witnesses.**
Meaning unchanged.

Sec. 796. Sec. **789. Service of summons for witness.**
Meaning unchanged.

(196*a*) R. v. Williams, 10 Can. Cr. Cas., 330; 11 B. C. R., 351.
(197) R. v. Bowers, (No. 2), 6 Can. Cr. Cas., 264.

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Sec. 797.	Sec. 790. **Dismissal of charge.**	*Meaning unchanged.*
Sec. 798.	Sec. 791. **Effect of conviction.**	*Unchanged.*
Sec. 799.	Sec. 792. **Certificate of dismissal or conviction.**	*Unchanged.*
Sec. 800.	**Proceeding not to be void for defect in form.**	*Omitted.*
Sec. 801.	Sec. 793. **Result of hearing to be filed in Court of Sessions.** — The Magistrate adjudicating under the provisions of this part shall transmit the conviction, or a duplicate of the certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the clerk of the peace or other proper officer for the district, city, county or place wherein the offence was committed, there to be kept by the proper officer among the records of the general or quarter sessions of the peace or of any court discharging the functions of a court of general or quarter sessions of the peace. (198)	
Sec. 802.	Sec. 794. **Evidence of conviction or dismissal.**	*Unchanged.*
Sec. 803.	Sec. 795. **Restitution of property.**	*Unchanged.*
Sec. 804.	Sec. 796. **Remand by a justice of a person for trial before a magistrate.** — Whenever any person is charged before any justice or justices, with any offence mentioned in section seven hundred and seventy-three, and in the opinion of such justice or justices the case is proper to be disposed of summarily by a magistrate, as in this Part provided, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for trial before the nearest magistrate in like manner in all respects as a justice or justices are authorized to commit an accused person for trial at any court: Provided that no justice or justices, in any province, shall so remand any person for trial before any magistrate in any other province. 2. Any person so remanded for trial before	

(198) Unchanged, except by the omission of par. 2 of the old section 801.

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		a magistrate in any city, may be examined and dealt with by the said magistrate or any other magistrate in the same city.	
Sec. 8[illegible]		**Non-appearance of person under recognizance.**	*Omitted here.* (199)
Sec. 782.	Sec. 797.	**Appeal in respect of offences mentioned in (a) or (f) of section 773.** When any of the offences mentioned in paragraphs (*a*) or (*f*) of section seven hundred and seventy-three is tried in any of the provinces under this Part an appeal shall lie from a conviction for the offence in the same manner as from summary convictions under Part XV., and all provisions of that Part relating to appeals shall apply to every such appeal: Provided that in the province of Saskatchewan or Alberta there shall be no appeal if the conviction is made by a judge of a superior Part.	(200)
Sec. 808.	Sec. 798.	**Certain provisions not applicable to this Part.** Except as specially provided for in the two last preceding sections, neither the provisions of this Act relating to preliminary enquiries before justices, nor of Part XV, shall apply to any proceedings under this Part.	(201)
Sec. 807.	Sec. 799.	**Forms to be used.** A conviction or certificate of dismissal under this Part may be in the form 55, 56, or 57 applicable to the case or to the like effect; and whenever the nature of the case requires it, such forms may be altered by omitting the words stating the consent of the person to be tried before the magistrate, and by adding the requisite words, stating the fine imposed, if any, and the imprisonment, if any, to which the person convicted is to be subjected, if the fine is not sooner paid. *Slightly altered, as here set forth.*	

(199) Out of the substance of section 805, of section 878 and of paragraph 13 of section 900 of the old Code, a new section, — 1097, *post*,— is formed.

(200) Taken (with some alterations) from par. (v.) of subsec. (*a*) of the old section 782.

(201) Taken from the old section 808, with alterations as here set forth.

PART XVII.

TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES.

Interpretation.

Sec. 809. Sec. **800. Definitions.** In this Part, unless the context otherwise requires, —

(*a*) 'two or more justices,' or 'the justices,' includes,

(i) in the provinces of Ontario and Manitoba, any judge of the county court being a justice, police magistrate or stipendiary magistrate, or any two justices, acting within the limits of their respective jurisdictions,

(ii) in the province of Quebec, any two or more justices, the sheriff of any district, except Montreal and Quebec, the deputy sheriff of Gaspé, and any recorder, judge of the sessions of the peace, police magistrate, district magistrate or stipendiary magistrate, acting within the limits of their respective jurisdictions.

(iii) in the provinces of Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, any functionary or tribunal invested by the proper legislative authority with power to do acts usually required to be done by two or more justices,

(iv) in the provinces of Saskatchewan and Alberta, a judge of any district court, or any two justices or any police magistrate or other functionary or tribunal having the powers of two justices and acting within the local limits of his or its jurisdiction.

(v) in the Northwest Territories, any stipendiary magistrate, any two justices sitting together, and any functionary or tribunal having the powers of two justices, and

(vi) in the Yukon Territory, any judge of the Territorial Court, any two justices sitting together, and any functionary or tribunal having the powers of two justices;

(*b*) '**the common gaol or other place of confinement**' includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which, by the law of that province, the offender may be sent.

Altered, as here set forth. (*And amended by the 6 and 7 Ed. VII, c. 45, sec. 6, subsec. (c)*).

APPLICATION OF THIS PART.

Sec. 829. Sec. **801. Not to apply to certain offences in British Columbia or Prince Edward Island.** — The provisions of this Part shall not apply to any offence committed in the Province of British Columbia or Prince Edward Island, punishable by imprisonment for two years and upwards; and in such provinces it shall not be necessary to transmit any recognizance to the clerk of the peace or other proper officer. *Altered, as here set forth.*

JURISDICTION.

Sec. 810. Sec. **802. Theft by person not over sixteen. Punishment.** *Unchanged.*

Sec. 830. Sec. **803. No imprisonment, under this Part, in reformatory in Ontario.** *Unchanged.*

Sec. 831. Sec. **804. Not to prevent summary conviction of any person triable under this Part.** *Unchanged.*

PROCEDURE.

Sec. 811. Sec. **805. Procuring appearance of Accused.** Whenever any person whose age is alleged not to

exceed sixteen years, is charged with any offence mentioned in section 802, on the oath of a credible witness before any justice, such justice may issue his summons or warrant to summon or to apprehend the person so charged, to appear before any two justices, at a time and place to be named in such summons or warrant.

Slightly altered, as here set forth.

Sec. 812. Sec. 806. **Remand of accused.** *Unchanged.*

Sec. 813. Sec. 807. **Accused to elect how to be tried.** The justices before whom any person is charged and proceeded against under the provisions of this Part before such person is asked whether he has any cause to show why he should not be convicted, shall say to the person so charged, these words, or words to the like effect;

"We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a Jury, you must object now to our deciding upon it at once."

2. And if such person, or a parent or guardian of such person, then objects, no further proceedings shall be had under the provisions of this part; but the justices may deal with the case according to the provisions set out in Parts XIII and XIV as if the accused were before them thereunder.

Altered, as here set forth.

Sec. 814. Sec. 808. **When Accused shall not be tried summarily.** If the justices are of opinion, before the person charged has made his defence, that the charge is, from any circumstance, a fit subject for prosecution by indictment, or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this Part, the justices shall not deal with it summarily, but may proceed to hold a preliminary inquiry as provided for in Parts XIII. and XIV.

2. In case the accused has elected to be tried by a jury, the justices shall state in the warrant of commitment the fact of such election having been made.

Altered, as here set forth.

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Sec. 815.	Sec. **809. Summons to witness.**	*Meaning unchanged.*
Sec. 816.	Sec. **810. Binding over witness.**	*Unchanged.*
Sec. 817.	Sec. **811. Warrant when witness disobeys summons.**	*Unchanged.*
Sec. 818.	Sec. **812. Service of summons.**	*Unchanged.*
Sec. 819.	Sec. **813. Discharge of Accused.** If the justices upon the hearing of the case deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the person charged, and make out and deliver to him a certificate in the form 58, or to the like effect, under the hands of such justices, stating the fact of such dismissal: Provided that if the dismissal shall be on account only of it being deemed inexpedient to inflict any punishment the accused shall be discharged only on his finding sureties for his good behaviour.	*Altered, as here set forth.*
Sec. 820.	Sec. **814. Form of conviction.** The justices before whom any person is summarily convicted of any offence in this Part previously mentioned may cause the conviction to be drawn up in Form 59, or in any other form to the same effect, and the conviction shall be good and effectual to all intents and purposes. (202)	
Sec. 821.	Sec. **815. Further proceeding barred.**	*Unchanged.*
Sec. 822.	Sec. **816. Conviction and recognizances to be filed.**	*Unchanged.*
Sec. 823.	**Quarterly Returns.**	*Omitted here.*
Sec. 824.	Sec. **817. Restitution of property.**	*Unchanged.*
Sec. 825.	Sec. **818. Proceedings when penalty not paid.**	*Unchanged.*
Sec. 826.	Sec. **819. Costs.**	*Meaning unchanged.*
Sec. 828.	Sec. **820. Costs to be certified by Justice.**	*Meaning unchanged.* (203)
Sec. "	Sec. **821. Order for payment.**	*Meaning unchanged.* (203)

(202) The second paragraph of the old section 820 is here omitted.
(203) Except that the old section, 828, is divided into two sections, 820 and 821.

PART XVIII.

SPEEDY TRIALS OF INDICTABLE OFFENCES.

Application of this Part.

Sec. 762. Sec. **822.** The provisions of this Part do not apply to the Northwest Territories or the Yukon Territory.

Altered, as here set forth, and as amended by 6 and 7 Ed. VII, c. 45, sec. 6 (d), it being declared, however, by sec. 7 of this Act that it shall come into force as to Saskatchewan and Alberta only upon proclamation of the Governor General).

Interpretation.

Sec. 763. Sec. **823. Definitions** of "**Judge**" and of "**County Attorney**" or "**Clerk of the Peace.**" In this Part, unless the context otherwise requires,—

(*a*) the expression "Judge" means and includes,—

(i) in the province of Ontario any judge of a county or district court, junior judge or deputy judge authorized to act as chairman of the general sessions of the peace.

(ii) in the province of Quebec, in any district wherein there is a judge of the sessions of the peace, such judge of sessions, and, in any district wherein there is no judge of the sessions of the peace but wherein there is a district magistrate, such district magistrate, and, in any district wherein there is no judge of sessions of the peace and no district magistrate, *any* judge of the sessions of the peace, or the sheriff of such district.

(iii) in each of the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any judge of a county court.

(iv) in the province of Manitoba, the chief justice or a puisne judge of the Court of King's Bench, or any judge of a county court.

(v) in the province of British Columbia, the chief justice or a puisne judge of the Supreme Court, or any judge of a county court.

(vi) in the provinces of Saskatchewan and Alberta, a judge of the Supreme Court or of any district court.

(*b*) 'county attorney' or 'clerk of the peace' includes, in the province of Ontario, the County Crown Attorney, in the provinces of Nova Scotia and Prince Edward Island, any clerk of a county court, and, in the province of Manitoba, any Crown Attorney, the prothonotary of the Court of King's Bench, and any deputy prothonotary thereof, any deputy clerk of the peace, and the deputy clerk of the Crown and pleas for any district in the said province, and, in the provinces of Saskatchewan and Alberta, any local registrar, clerk or deputy clerk of the Supreme Court of the province or any clerk or acting clerk of a district court or any person conducting under proper authority the Crown business of the court. (*As amended by the Criminal Code Amendment Act, 1907, c. 8, and, as added to by the 6 and 7 Ed. VII, c. 45, sec. 6, subsec. (e); it being declared, however, by sec. 7 of the latter Act that that Act shall come into force as to Saskatchewan and Alberta only upon proclamation of the Governor in Council*).

JURISDICTION.

Sec. 764. Sec. **824. Judge is a Court of Record.** (203*a*)

(203*a*) Amended by sec. 6 (*f*) of 6 and 7 Ed. VII, c. 45, so as to make such court the County Court Judge's Criminal Court in every province of Canada except the provinces of Quebec, Saskatchewan and Alberta.

Sec. 765. Sec. **825. Offences triable under this Part, by consent.** Every person committed to gaol for trial on a charge of being guilty of any of the offences which are enumerated in section 582, as being within the jurisdiction of the general or quarter sessions of the peace, may, with his own consent, be tried in any province in Canada, and, if convicted, sentenced by the judge.

2. An entry shall be made of such consent at the time the same is given.

3. Such trial shall be had under and according to the provisions of this Part out of sessions and out of the regular term or sittings of the court, and whether the court before which, but for such consent, the said person would be triable for the offence charged or the grand jury thereof is or is not then in session.

4. A person who has been bound over by a justice or justices under the provisions of section six hundred and ninety-six, and has been surrendered by his sureties, and is in custody on the charge, or who is otherwise in custody awaiting trial on the charge, shall be deemed to be committed for trial within the meaning of this section. (*As amended by 6 and 7 Ed. VII, c. 45, sec. 6 (g)*).

It has been held, in the province of Quebec, that the election of a speedy trial by a person, — who, at the preliminary enquiry, was bailed to appear for trial, — must take place before a true bill has been found by the Grand Jury and filed of record in the jury court, and that, unless so made, the jury court will have exclusive jurisdiction; that jurisdiction to hold a speedy trial is strictly limited by the terms of the above section, 825, and is only conferred where the accused has been committed to gaol for trial or is otherwise in custody awaiting a trial on the charge against him. (204) It has also been held that, in order to waive trial by jury and to elect to be tried by a Judge having jurisdiction under the Speedy Trials clauses, an information must have been laid before a justice of the peace, a preliminary enquiry must have been had, depositions containing evidence concerning the offence charged

(204) R. v. Komlensky, 6 Can. Cr. Cas., 524; Que. Jud. Rep., 12 K. B., 329. See R. v. Wener, *infra*.

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must have been taken, and the accused must have been committed for trial. (205)

PROCEDURE.

Sec. 766. Sec. **826. Sheriff to notify judge after committal of accused. Notice to prosecuting officer when judge does not reside in county.** *Unchanged.*

Sec. 767. Sec. **827. Arraignment.** The judge or such prosecuting officer upon having obtained the depositions on which the prisoner was so committed, shall state to him,—

(*a*) that he is charged with the offence, describing it;

(*b*) that he has the option to be forthwith tried before a judge without the intervention of a jury, or to remain in custody or under bail, as the court decides, to be tried in the ordinary way by the court having criminal jurisdiction.

2. If the prisoner has been brought before the prosecuting officer, and consents to be tried by the judge, without a jury, such prosecuting officer shall forthwith inform the judge, and the judge shall thereupon fix an early day for the trial and communicate the same to the prosecuting officer.

3. In such case or if the prisoner has been brought before the judge and consents to be tried by him without a jury, the prosecuting officer shall prefer the charge against him for which he has been committed for trial, and if, upon being arraigned upon the charge, the prisoner pleads guilty, the prosecuting officer shall draw up a record as nearly as may be in form 60.

4. Such plea shall be entered on the record, and the judge shall pass the sentence of the law on such prisoner, which shall have the same force and effect as if passed by a court having jurisdiction to try the offence in the ordinary way.

Altered, as here set forth. (206)

(205) R. v. Wener, Que. Jud. Rep., 12 K. B., 320; 6 Can. Cr. Cas., 406.

(206) The new section, 827, is taken from paragraphs 1, 2 and 3 of the old section 767, — paragraphs 4 and 5 thereof being made into section 828, *infra*.

An election for speedy trial, under this Part, must be a general one to be tried by a judge having jurisdiction, and is invalid, if restricted to trial only by the judge before whom the arraignment takes place. (207)

The waiver by the accused, upon a preliminary enquiry, of the taking of depositions, and his consent to be committed for trial, without any depositions, deprive him of the right of speedy trial, as the charge must, under section 827 be stated to the accused from the depositions on which he was committed. (208)

A prisoner, who, — after being committed for trial, — has elected in favor of a speedy trial, but who breaks gaol before a day for such trial has been fixed, may, on his re-capture, claim the right to a speedy trial for the offence for which he was committed for trial, notwithstanding that the Grand Jury has, in the meantime, found an indictment against him for such offence; but, where, without a preliminary enquiry, an indictment, for the offence of breaking gaol, has been found against the accused, he cannot elect for a speedy trial, without a jury, upon the charge of breaking gaol. (208*a*)

After a committal for trial at the instance of the Crown upon a charge of manslaughter and arraignment thereon under the speedy trials clauses and election of the accused for speedy trial without a jury, the proceedings in the County Court Judge's Criminal Court will not be stayed at the instance of the Crown to enable a charge of murder to be substituted. (209)

It has been held, in Nova Scotia, that where an accused has been committed to gaol for trial upon a charge which is within the jurisdiction of a County Court Judge's Criminal Court, under the speedy trials clauses, the jurisdiction of that court, in regard to the charge laid, is not ousted by the fact that a more serious offence, (which that court cannot try), is disclosed by the depositions upon which the charge was founded. (210) In British Columbia, however, it has since been held that, — after a commitment upon a charge of unlawful assault with intent to carnally know, — the accused cannot insist upon a trial without a jury, under the Speedy Trials clauses, if the Crown express an intention of indicting him for an attempt to commit a rape, which latter offence is beyond the

(207) R. v. McDougall, 8 Can. Cr. Cas., 234; 24 C. L. T., 324. See R. v. Breckenridge, 7 Can. Cr. Cas., 116.

(208) *Ib.*

(208*a*) R. v. Hebert, 10 Can. Cr. Cas., 288.

(209) R. v. Telford, 8 Can. Cr. Cas., 223.

(210) R. v. De Wolfe, 9 Can. Cr. Cas., 38.

jurisdiction of a county judge's criminal court and is disclosed on the depositions returned. (211)

A charge of theft preferred under the speedy trials clauses of the Code is sufficient, if it states that the defendant "unlawfully did steal," etc., without specifically averring a taking or converting "fraudulently and without color of right and with intent," etc., in the words of section 347, *ante*. (212)

Depositions to which the magistrate had affixed his signature, although such signature was not placed at the foot or end thereof, in accordance with section, 682, *ante*, are sufficiently signed for the purposes of a "charge brought thereon, under the speedy trials clauses." (213)

Sec. 767. Sec. 828. **Demand of jury trial; and Re-election.** If the prisoner on being brought before the prosecuting officer or before the judge as aforesaid demands a trial by jury, he shall be remanded to gaol.

2. Any prisoner who has elected to be tried by jury may, notwithstanding such election, at any time before such trial has commenced, and whether an indictment has been preferred against him or not, notify the sheriff that he desires to re-elect, and it shall thereupon be the duty of the sheriff and judge or prosecuting officer to proceed as directed by section eight hundred and twenty-six.

3. Thereafter unless the judge, or the prosecuting officer acting under subsection two of section eight hundred and twenty-six, is of opinion that it would not be in the interests of justice that the prisoner should be allowed to make a second election, the prisoner shall be proceeded against as if his said first election had not been made. (214)

Where a defendant, on arraignment before a county court judge, elects speedy trial, he cannot afterwards withdraw such election and obtain a trial by jury. (215)

When a new trial has been ordered by the Court of Appeal upon

(211) R. v. Preston, 9 Can. Cr. Cas., 201; 11 B. C. R., 159.

(212) R. v. George, 5 Can. Cr. Cas., 469; *aff.*, 8 Can. Cr. Cas., 401.

(213) R. v. Jodrey, 9 Can. Cr. Cas., 477.

(214) This new section, 828, is taken from paragraphs 4 and 5 of the old section 767, — paragraphs 1, 2 and 3 thereof being made into section 827, *supra*.

(215) R. v. Keefer, 5 Can. Cr. Cas., 122.

an appeal from a trial with a jury, the prisoner is not entitled to re-elect in favor of a speedy trial without a jury. (216)

Sec. 768. Sec. **829. Persons jointly accused.** *Unchanged.*

Sec. 769. Sec. **830. Re-election after electing under Part XVI or XVII.** If under Part XVI. (217) or Part XVII. (218), any person has been asked to elect whether he would be tried by the magistrate or justices, as the case may be, or before a jury, and he has elected to be tried by a jury, and if such election is stated in the warrant of committal for trial, the sheriff, prosecuting officer or judge shall not be required to take the proceedings directed by this Part.

2. If such person, after his said election to be tried by a jury, has been committed for trial he may, at any time before the regular term or sittings of the court at which such trial by jury would take place, notify the sheriff that he desires to re-elect.

3. In such case it shall be the duty of the sheriff to proceed as directed by section eight hundred and twenty-six, and thereafter the person so committed shall be proceeded against as if his said election in the first instance had not been made. *Slightly altered.*

Sec. 770. Sec. **831. Continuance of proceedings before another judge.** *Unchanged.*

Sec. 771. Sec. **832. Election after committal under Parts XVI and XVII.** *Unchanged.* (219)

Sec. 772. Sec. **833. Trial of accused.** If the prisoner upon being arraigned under this Part consents as aforesaid, and pleads not guilty the judge shall appoint an early day or the same day for his trial, and the county attorney or clerk of the peace shall subpoena the witnesses named in the depositions or such of them and such other witnesses as he thinks requisite to

(216) R. v. Coote, 7 Can. Cr. Cas., 92.

(217) Part XVI relates to the Summary Trial of Indictable Offences.

(218) Part XVII relates to the Trial of Juvenile Offenders for Indictable Offences.

(219) Except that, instead of a reference being made, (as in section 771 of the old Act), to Parts LV or LVI the reference now is to Parts XVI and XVII.

prove the charge, to attend at the time appointed for such trial, and the judge may proceed to try such prisoner, and if he be found guilty sentence as aforesaid shall be passed upon him.

2. If he be found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question.

3. The prosecuting officer in such case shall draw up a record as nearly as may be in form 61.

Upon a speedy trial, the informant at whose instance the prosecution was begun has no *locus standi*, and is not entitled to prosecute through his counsel unless authorized to do so by the Attorney General. (220)

Sec. 773. Sec. **834. Preferring charges other than those for which the accused is committed.** The county attorney or clerk of the peace or other prosecuting officer may, with the consent of the judge, prefer against the prisoner a charge or charges for any offence or offences for which he may be tried under the provisions of this part other than the charge or charges for which he has been committed to gaol for trial, although such charge or charges do not appear or are not mentioned, in the depositions upon which the prisoner was so committed.

2. Any such charge may thereupon be dealt with, prosecuted and disposed of, and the prisoner may be remanded, held for trial or admitted to bail thereon, in all respects as if such charge had been the one upon which the prisoner was committed for trial.

Altered, by the addition of paragraph 2.

But when any such other charges are preferred against the accused, his consent to a speedy trial of such other charges must be shown. Thus, where some prisoners were charged with having defrauded the prosecutor by means of the three-card monte game, they consented to be tried summarily. When they were brought up for trial, the Crown attorney applied for and obtained leave to substitute a charge of combining to obtain money by false pre-

(220) R. v. Clark, 9 Can. Cr. Cas., 125.

tences; but the prisoners objected. The trial was then proceeded with, without their consent to a summary trial for this substituted offence being obtained. And, upon error brought, it was held that the consent of the prisoners to be summarily tried on the substituted charge should distinctly appear, and that, by reason of its absence, the conviction was bad. (221)

A new charge cannot be added without the leave of the judge, although it be founded upon the same depositions; and the leave of the judge to prefer another charge against the accused must be obtained *before* the additional charge is preferred. (222)

The judge, at a speedy trial, should not, against the wish of the prisoner, give his consent to any other charge being preferred than that upon which the prisoner was committed for trial, unless it is clear that, while it may be more formally or differently expressed, it is substantially the same charge as that on which he was committed for trial. (223)

A speedy trial at a County Judge's criminal court in Ontario and a conviction thereon are not invalidated by the judge having taken evidence upon another charge against the same accused pending an adjournment of the hearing of the principal charge and after part of the evidence therein had been taken, if the charges were different as to time and place and the judge certifies that he was not influenced as to the principal charge by the evidence in the other. (224)

Sec. 774. Sec. **835. Powers of Judge on trial.** — The judge shall, in any case tried before him, have the same power as to acquitting or convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner were tried by a court having jurisdiction to try the offence in the ordinary way, and may render any verdict which might be rendered by a jury upon a trial at a sitting of any such court. *Slightly altered.*

Sec. 775. Sec. **836. Bail if accused elects trial by judge without jury.** If the prisoner elects to be tried by a judge without the intervention of a jury the judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court be

(221) Goodman v. R., 3 O. R., 18.
(222) R. v. Cohen, 6 Can. Cr. Cas., 386.
(223) R. v. Carriere, 6 Can. Cr. Cas., 5; 14 Man. L. R., 52.
(224) R. v. Bullock, 8 Can. Cr. Cas., 8; 40 C. L. J., 27.

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adjourned or there is any other reason therefor.

2. Such bail may be entered into and perfected before the Clerk of the Court.

Slightly altered.

Sec. 776. Sec. **837. Bail if jury trial elected.** *Unchanged.*

Sec. 777. Sec. **838. Adjournment.** *Unchanged.*

An adjournment of a speedy trial may be made under this section in order to obtain the attendance of a material witness, although the party applying for the same had elected to proceed without such witness and although the trial had commenced. (225)

Sec. 778. Sec. **839. Powers of amendment.** — The judge shall have all the powers of amendment which are possessed by any court before which an indictment may be tried under this Act.

Slightly altered.

An amendment of a charge under the Speedy Trials clauses should not be allowed, if such amendment is one which would involve the investigation of entirely new facts not disclosed in the depositions. (226)

Sec. 779. Sec. **840. Recognizance to prosecute or give evidence under section 692.** *Unchanged.* (227)

Sec. 780. Sec. **841. Witnesses to attend throughout the trial.**

Meaning unchanged.

Sec. 781. Sec. **842. Compelling attendance of witnesses, by means of a warrant of arrest and commitment for contempt.**

Meaning unchanged. (228)

PART XIX.

PROCEDURE BY INDICTMENT.

General Provisions as to Indictments.

Sec. 608. Sec. **843. Indictments need not be on parchment.**

Unchanged.

Sec. 609. Sec. **844. Statement of Venue not necessary.**

Meaning unchanged.

(225) R. v. Gordon, 2 Can. Cr. Cas., 141.

(226) R. v. Clark, 9 Can. Cr. Cas., 125.

(227) Except that, instead of a reference therein to the old section 598, the reference now is to section 692 of the new Act.

(228) The forms of warrant for arrest of a witness and of conviction for contempt are now forms 62 and 63.

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Sec. 610. Sec. **845. Heading of Indictment. Unnecessary statement.** — It shall not be necessary to state in any indictment that the jurors present, upon oath or affirmation.

2. It shall be sufficient if an indictment begins according to form 63, or to the like effect.

3. Any mistake in the heading shall, upon being discovered, be forthwith amended, and, whether amended or not, shall be immaterial.

Slightly altered.

SPECIAL CASES.

Sec. 618. Sec. **846. Indictment for pretending to send money, etc., in letter.** *Unchanged.*

Sec. 614. Sec. **847. Indictment for treason or treasonable offences.** *Meaning unchanged.*

Sec. 625. Sec. **848. Indictment for theft by tenant or lodger.** *Unchanged.*

Sec. 627. Sec. **849. Indictments against accessories or receivers.** *Unchanged.*

Sec. 624. Sec. **850. Indictments in respect to post office employees.** In any indictment against any person employed in the post office of Canada, for any offence against this Act, or against any person for an offence committed in respect of any person so employed, it shall be sufficient to allege that the offender or such other person was employed in the post office of Canada at the time of the commission of such offence, without stating further the nature or particulars of his employment. (1)

Sec. 628. Sec. **851. Indictment charging previous convictions.** *Unchanged.*

GENERAL PROVISIONS AS TO COUNTS.

Sec. 611. Sec. **852. Statement of substance of offence, in popular language, or in words of enactment, etc.** — Every count of an indictment shall contain, and shall be sufficient if it contains

(1) This new section, 850, contains only the third paragraph of the old section 624, the first two paragraphs of the old section 624 being made into section 869, *post*.

in substance, a statement that the accused has committed some indictable offence therein specified.

2. Such statement may be made in popular language without any technical averments or any allegations of matter not essential to be proved.

3. Such statement may be in the words of the enactment describing the offence or declaring the matter charged to be an indictable offence, or in any words sufficient to give the accused notice of the offence with which he is charged.

4. Form 64 affords examples of the manner of stating offences. (2)

Sec. 611. Sec. 853. **Details of circumstances.** — Every count of an indictment shall contain so much detail of the circumstances of the alleged offence as is sufficient to give the accused reasonable information as to the act or omission to be proved against him, and to identify the transaction referred to: Provided that the absence or insufficiency of such details shall not vitiate the count.

2. A count may refer to any section or subsection of any statute creating the offence charged therein, and in estimating the sufficiency of such count the court shall have regard to such reference.

3. Every count shall in general apply only to a single transaction. (2)

An indictment should describe the offence charged with such particularity as will inform the accused of the specific acts for which he is called upon the answer. (3)

An indictment for obstructing a clergyman in celebrating divine service will not be quashed for failure to allege therein that the clergyman was in lawful charge of the church or place of worship. (4)

An indictment for unlawfully conspiring together and with each other to deprive another of the necessaries of life, to wit, proper

(2) The old section, 611, is made into these two new sections, — 852 and 853.

(3) R. v. Beckwith, 7 Can. Cr. Cas., 450.

(4) R. v. Wasyl Kapij, 9 Can. Cr. Cas., 186.

medical care and nursing, whereby such other's death was caused, but not alleging any duty to supply such care and nursing, is bad, as not disclosing an offence known to the law, because of the omission of such allegation: and an indictment for a conspiracy to cure another of a sickness endangering life, "by unlawful and improper means," and thereby causing such other's death, is likewise bad, and should be quashed because it does not specify the unlawful and improper means nor indicate the specific crime or wrong intended to be relied upon. (5)

Each count of an indictment must contain a statement of all the essential ingredients which constitute the offence charged; and in charging the offence of uttering a forged instrument the indictment must aver that the defendants made use of or uttered the instrument knowing it to have been forged. (6)

A count, charging the accused with having committed perjury during his examination as a witness, at an inquest before a coroner and a jury, is not invalid by reason of its omitting, — in describing the tribunal at which the alleged perjury was committed, — to mention the jury, it being held that the tribunal was sufficiently identified. (7)

An indictment that "A. B. attempted to kill and murder C. D.," sufficiently discloses an indictable offence; and the court has the power to allow it to be amended so as to read that "A. B., with intent to commit murder, shot at C. D." (8)

Where the statutory form of indictment is not followed but the indictment contains all the averments which the statute requires, the addition of other unnecessary averments does not invalidate the indictment, although it might not be sufficient at common law. (9)

Sec. 612. Sec. **854. Offences may be charged in the alternative.** A count shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the enactment describing any indictable offence or declaring the matters, acts or omissions charged to be an indictable offence, or on the ground that it is double or multifarious. (10)

(5) R. v. Goodfellow, 10 Can. Cr. Cas., 424; 11 Ont. L. R., 359.
(6) R. v. Weir. (No. 5), 3 Can. Cr. Cas., 409.
(7) R. v. Thompson, 4 Can. Cr. Cas., 205.
(8) R. v. Mooney, 11 Can. Cr. Cas., 333; Que. Jud. Rep., 15 K. B., 57.
(9) R. v. Coote, 8 Can. Cr. Cas., 190.
(10) Taken from the first part of paragraph 1 of the old section 612; the remainder of par. 1, and the whole of par. 2 of that old section being made into section 892, *post*.

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Sec. 613. Sec. **855. Count not objectionable or insufficient because of omission of certain statements.** — No count shall be deemed objectionable or insufficient for the reason only, —

(*a*) that it does not contain the name of the person injured, or intended, or attempted to be injured; or,

(*b*) that it does not state who is the owner of any property therein mentioned; or,

(*c*) that it charges an intent to defraud without naming or describing the person whom it was intended to defraud; or

(*d*) that it does not set out any document which may be the subject of the charge; or,

(*e*) that it does not set out the words used where words used are the subject of the charge; or

(*f*) that it does not specify the means by which the offence was committed; or

(*g*) that it does not name or describe with precision any person, place or thing; or

(*h*) that it does not, in cases where the consent of any person, official, or authority is required before a prosecution can be instituted, state that such consent has been obtained.

2. No provision contained in this part as to matters which are not to render any count objectionable or insufficient shall be construed as restricting or limiting in any way the general provisions of sections 852 and 853. *Altered as here set forth.*

An indictment for conspiracy to defraud is valid without setting out any overt acts; and the name of the person injured or intended to be injured need not be stated therein. (11)

An indictment for conspiracy to defraud may properly charge that the conspiracy was with persons unknown, if there was no definite information of the identity of the alleged co-conspirators; and where, at the trial of such an indictment, the name of one of the co-conspirators is, for the first time, disclosed in the testimony of a Crown witness, that information may be added to the statement of particulars of the indictment. (12)

(11) R. v. Hutchinson, 8 Can. Cr. Cas., 486; 11 B. C. R., 24.
(12) R. v. Johnston, 6 Can. Cr. Cas., 232.

Sec. 626. Sec. **856. Joinder of Counts.** — Any number of counts for any offences whatever may be joined in the same indictment, and shall be distinguished in the manner shewn in form 63, or to the like effect; Provided that to a count charging murder no count charging any offence other than murder shall be joined. (13)

Sec. " Sec. **857. Each count may be treated as a separate indictment.** — When there are more counts than one in an indictment each count may be treated as a separate indictment.

2. If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately: Provided that, unless there be special reasons, no order shall be made preventing the trial at the same time of any number of distinct charges of theft, not exceeding three, alleged to have been committed within six months from the first to the last of such offences, whether against the same person or not. (14)

Sec. " Sec. **858. Order for trial separately.** — Any order for trial upon one or more counts of an indictment separately may be made either before or in the course of the trial, and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed.

2. The counts in the indictment as to which the jury are so discharged shall be proceeded upon in all respects as if they had been found in a separate indictment. (14)

PARTICULARS.

Sec. 613. Sec. **859. Particulars may be ordered.** — The court
Sec. 615. may, if satisfied that it is necessary for a
Sec. 616. fair trial, order that the prosecutor shall furnish a particular, —

(13) This new section, 856, contains only the first paragraph of the old section 626; sections 2, 3 and 4 of that old section being made into sections 857 and 858, *infra*.

(14) Subsections 2, 3 and 4 of the old section 626 are made (differently arranged) into these two new sections, 857 and 858.

(*a*) of what is relied on in support of any charge of perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring the commission of any of such offences;
(*b*) of any false pretenses or any fraud charged;
(*c*) of any attempt or conspiracy by fraudulent means;
(*d*) stating what passages in any book, pamphlet, newspaper or other printing or writing are relied on in support of a charge of selling or exhibiting an obscene book, pamphlet, newspaper, printing or writing;
(*e*) further describing any document or words the subject of a charge;
(*f*) further describing the means by which any offence was committed;
(*g*) further describing any person, place or thing referred to in any indictment. (15)

Sec. 617. Sec. **860. Copy particulars to be supplied to the accused.** *Unchanged.*

The ordering of particulars to be furnished to the accused by the Crown in respect of an indictment for theft is a matter of judicial discretion.

Where the Crown is unable to specify in detail the several sums alleged to have been received and misappropriated by a Government employee and the prosecution is laid for theft of a sum aggregating the deficit appearing upon the employee's books and returns, particulars should be ordered against the Crown only with regard to the direct proof of details so as not to exclude general evidence based upon the balances returned from time to time.

With the consent of the Crown, an order may be made for the delivery of particulars showing what statements of account made by the accused are proposed to be put in evidence for the prosecution, and what sums are alleged to have been wrongfully omitted therefrom or wrongfully inserted therein. (16)

SPECIAL CASES.

Sec. 615. Sec. **861. Libel.** No count for publishing a blasphemous, seditious, obscene or defamatory libel, or for selling or exhibiting an obscene book,

(15) Taken, in part, from the provisoes in the old sections 613, 615 and 616.
(16) R. v. Stevens, 8 Can. Cr. Cas., 387.

pamphlet, newspaper or other printed or written matter, shall be deemed insufficient on the ground that it does not set out the words thereof.

2. A count for libel may charge that the matter published was written in a sense which would make the publishing criminal, specifying that sense without any prefatory averment shewing how the matter was written in that sense.

3. On the trial it shall be sufficient to prove that the matter published was criminal either with or without such innuendo.

Altered, as here set forth.

Sec. 616. Sec. **862. Indictments for perjury, etc.** No count charging perjury, the making of a false oath, or of a false statement, fabricating evidence or subornation, or procuring the commission of any of these offences, shall be deemed insufficient on the ground that it does not state the nature of the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used or the evidence fabricated, or on the ground that it does not expressly negative the truth of the words used. (17)

Sec. " Sec. **863. Indictment for False pretense.** No count, which charges any false pretense, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretenses or the fraud or fraudulent means consisted. (18)

HOW AND IN WHOM PROPERTY MAY BE LAID.

Sec. 619. Sec. **864. Sufficiency of statements in indictments.**

Meaning unchanged.

Sec. 620. Sec. **865. Property of a corporate body.**

Meaning unchanged.

Sec. 621. Sec. **866. Indictment for stealing ores or minerals.** — In any indictment for any offence mentioned

(17) Taken from the first part of paragraph 1 of the old section 616.
(18) Taken from the first part of par. 2 of the old section 616.

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in sections 378 and 424, it shall be sufficient to lay the property in His Majesty, or in any person or corporation, in different counts in such indictment. (19)

Sec. 622. Sec. **867. Indictment for offences in respect of post cards, etc.** *Unchanged.*

Sec. 623. Sec. **868. Indictment for theft by public employees.** *Unchanged in meaning.*

Sec. 624. Sec. **869. Indictments for offences respecting letter bags and other mailable matter.** — When an offence is committed in respect of a post letter bag, or a post letter, or other mailable matter, chattel, money or valuable security sent by post, the property of such post letter bag, post letter, or other mailable matter, chattel, money or valuable security may, in the indictment preferred against the offender, be laid in the Postmaster General; and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter bag, post letter or other mailable matter, chattel or valuable security was of any value.

2. The property of any chattel or thing used or employed in the service of the post office, or of moneys arising from duties of postage, shall, except in the cases aforesaid, be laid in His Majesty, if the same is the property of His Majesty, or if the loss thereof would be borne by His Majesty, and not by any person in his private capacity. (20)

PREFERRING INDICTMENT.

Sec. **870. Order by Judge, for prosecution, when perjury committed before him.** — Any judge of any court of record, before whom any inquiry or trial is held, and which he is by law required or authorized to hold, may, if it appears to him that any person has been guilty of wilful and corrupt perjury in any evid-

(19) Taken from the first half of the old section 621; the latter half of that old section being made into section 893, *post*.

(20) Taken from the first two paragraphs of the old section 624, — the third paragraph of which is made into section 850, *ante*.

ence given, or in any affidavit, affirmation, declaration, deposition, examination, answer or other proceeding made or taken before him, direct such person to be prosecuted for such perjury, if there appears to such judge a reasonable cause for such prosecution.

2. Such judge may commit such person until the next term, sittings or session of any court having power to try for perjury, in the jurisdiction within which such perjury was committed, or permit such person to enter into a recognizance, with one or more sufficient sureties, conditioned for his appearance at such next term, sittings or session, and that he will then surrender and take his trial and not depart the court without leave.

3. Such judge may require any person he thinks fit to enter into a recognizance conditioned to prosecute or give evidence against the person so directed to be prosecuted. (21)

Sec. 641. Sec. 871. **Any one bound over may prefer indictment.** Any one who is bound over to prosecute any person, whether committed for trial or not, may prefer a bill of indictment for the charge on which the accused has been committed, or in respect of which the prosecutor is so bound over, or for any charge founded upon the facts or evidence disclosed on the depositions taken before the justice.

2. The accused may at any time before he is given in charge to the jury apply to the court to quash any count in the indictment on the ground that it is not founded on such facts or evidence, and the court shall quash such count if satisfied that it is not so founded.

3. If at any time during the trial it appears to the court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of such count remaining in the indictment, the court may then quash such

(21) Taken from the R. S. C., 1886, c. 154, sec. 4, set forth at page 140 of the Author's second edition.

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count and discharge the jury from finding any verdict upon it. (22)

Sec. " Sec. 872. **Crown Counsel may prefer indictment.** — The counsel acting on behalf of the Crown at any court of criminal jurisdiction may prefer against any person who has been committed for trial at such court a bill of indictment for the charge on which the accused has been so committed or for any charge founded on the facts or evidence disclosed in the depositions taken before the justice. (22)

Sec. " Sec. 873. **Attorney General, or any one by his direction, or any one with a Judge's written consent, or with consent of Attorney General, or by order of the Court, may prefer an indictment.** — The Attorney General or any one by his direction or any one with the written consent of a judge of any court of criminal jurisdiction or of the Attorney General, may prefer a bill of indictment for any offence before the grand jury of any court specified in such consent.

2. Any person may prefer any bill of indictment before any court of criminal jurisdiction by order of such court.

3. It shall not be necessary to state such consent or order in the indictment and an objection to an indictment for want of such consent or order must be taken by motion to quash the indictment before the accused person is given in charge.

4. Except as in this Part previously provided no bill of indictment shall be preferred in any province of Canada. (22)

Sec. 873A. **Mode of charge in Saskatchewan and Alberta.** — In the provinces of Saskatchewan and Alberta, it shall not be necessary to prefer any bill of indictment before a grand jury, but it shall be sufficient that the trial of any person charged with a criminal offence be commenced by a formal charge in writing setting forth, as in an indictment, the offence with which he is charged.

(22) The old section, 641, is divided into these three new sections, 871, 872 and 873, without any material alterations.

2. Such charge may be preferred by the Attorney General, or by any person with the written consent of the judge of the court or of the Attorney General, or by order of the Court. (*Added by the Criminal Code Amendment Act* 1907, 6 *and* 7 *Ed. VII, c.* 8).

Where the order or consent of the presiding judge is necessary to validate the preferring of an indictment, such order or consent must be put in writing before the indictment is brought in, and it cannot be afterwards made *nunc pro tunc.* (23)

Sec. 642. **No trial upon a Coroner's Inquisition.**
Omitted here. (24)

PROCEEDINGS BEFORE THE GRAND JURY.

Sec. 643. Sec. **874. Oath of a witness before a grand jury need not be taken in open court.** *Unchanged.*

Sec. 644. Sec. **875. Oath may be administered by foreman.** *Unchanged.*

The swearing of the grand jury should take place after its members are duly empanelled, and the foreman's oath should be taken in the presence of the other grand jurors, — they being afterwards sworn to observe the same oath. (25)

It is not necessary for the prisoner to be present in court when the grand jury is sworn. (26)

In the province of British Columbia it is imperative that thirteen jurors should be summoned for service on the grand jury, although seven of those appearing are sufficient to constitute a grand jury; and where the sheriff summoned only twelve, and omitted to summon the thirteenth because he was informed that the latter had become demented, seven of such twelve do not constitute a grand jury; and they are not competent to find an indictment. (27)

Objections to the constitution of the grand jury are, by sec. 899, *post,* restricted to cases where the accused is prejudiced by the irregularity; but this restriction or limitation does not apply where a grand jury was never legally constituted. (28)

Where the provincial statute governing the selection of jurors requires that only the first six names on the previous grand jury list shall be omitted and that six new selections be made to fill

(23) R. v. Beckwith, 7 Can. Cr. Cas., 450.
(24) And transferred to section 940, *post.*
(25) R. v. Belanger, 6 Can. Cr. Cas., 275.
(26) R. v. Mathurin, 8 Can. Cr. Cas., 1.
(27) R. v. Hayes, 7 Can. Cr. Cas., 453; 11 B. C. R., 4.
(28) *Ib.*

their places, the drawing of twelve new men as grand jurors is ineffectual to constitute a grand jury, and an indictment brought in by them while assuming to act as a grand jury will be quashed on motion. (29)

Sec. 645. Sec. **876. Names of witnesses to be endorsed on bill.** *Unchanged.*

The requirement that the foreman of the grand jury shall initial upon the bill of indictment the names of the witnesses examined before the grand jury is imperative, and not merely directory; and the failure to observe such requirement is good ground for quashing the indictment. (30)

The omission to endorse, upon the bill of indictment, the names of witnesses summoned by the grand jury of its own motion does not invalidate the indictment; but the court may send for the grand jury and direct the names of such additional witnesses to be endorsed and initialled, so that the accused may have notice upon whose testimony a true bill has been found. (31)

Sec. 646. Sec. **877. Names of witnesses must be submitted to grand jury.** *Unchanged.*

Depositions taken at the preliminary enquiry can only be read to the grand jury in cases where such depositions can be used as evidence before a petty jury at the trial. (32)

The evidence taken under a commission is admissible before the grand jury. (33)

The grand jury is at liberty to examine the Crown witnesses in any order they see fit, and the examination of a single one of the witnesses constitutes neither an irregularity nor an illegality, when it is admitted that this witness was in a position to establish full admission on the part of the prisoner. (34)

The presence in the grand jury room during the deliberations of the grand jury, of an unauthorized person, (summoned as a grand juror but not impanelled), will not invalidate an indictment then under consideration, if such person was excluded from the grand jury room before the presentment, unless it be shewn that the accused was thereby prejudiced. (35)

On discovery that a person summoned as a grand juror and coming into Court with the grand jury to present an indictment had not been sworn and had been admitted to the grand jury room dur-

(29) R. v. McDougall, 8 Can. Cr. Cas., 283.
(30) R. v. Belanger, *supra*.
(31) R. v. Holmes, 6 Can. Cr. Cas., 402.
(32) R. v. Belanger, *supra*.
(33) R. v. Venot, 6 Can. Cr. Cas., 471.
(34) R. v. Mathurin, 8 Can. Cr. Cas., 1.
(35) R. v. Kelly, 9 Can. Cr. Cas., 130; Can. Ann. Dig., (1905), 172.

ing their deliberations, the court may exclude such person, and direct the grand jury to retire to reconsider the bill, without requiring the grand jurors to be re-sworn. (36)

A prosecutor bound over at his own request to prefer an indictment, after the discharge of the accused on a preliminary enquiry, is only permitted to appear by counsel before the grand jury when the practice of the court so authorizes; and the practice, in the district of Montreal, requires a formal application to the court for permission; and the accused may apply for security for costs, under section 698, *ante*, at the time of the prosecutor's application for leave to go before the grand jury. (37)

Sec. 647. Sec. 878. **Fees for swearing witnesses.** *Unchanged.*

Sec. 649. **Removal of prisoners in case of unfitness, etc., of gaol.** *Omitted.*

This old section, 641, is transferred to the *Prisons and Reformatories Act*, (R. S., 1906, c. 148), and made into sections 4 and 5 of that Act.

PROCEEDINGS WHEN PERSON INDICTED IS AT LARGE.

Sec. 648. Sec. 879. **Bench Warrant.** — When any one against whom an indictment has been duly preferred and has been found, and who is then at large, does not appear to plead to such indictment, whether he is under recognizances to appear or not, the court before which the accused ought to have been tried may issue a warrant for his apprehension, which may be executed in any part of Canada.

2. The officer of the court at which said indictment is found, or, if the place of trial has been changed, the officer of the court before which the trial is to take place, shall, at any time after the time at which the accused ought to have appeared and pleaded, grant to the prosecutor, upon application made on his behalf and upon payment of twenty cents, a certificate of such indictment having been found which may be in form 65, or to the like effect. (38)

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(36) *Ib.*

(37) R. v. Hoo Yoke, 10 Can. Cr. Cas., 211; Que. Jud. Rep., 14 K. B., 540.

(38) The old section, 648, is divided into these 4 different sections, 879-882.

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Sec. "	Sec. 880. **Warrant by justice on certificate of indictment being found.** — Upon production of such certificate to any justice for the county or place in which the indictment was found, or in which the accused is or resides or is suspected to be or reside, such justice shall issue his warrant to apprehend him, and to cause him to be brought before such justice, or before any other justice for the same county or place, to be dealt with according to law. 2. The warrant may be in the form 66, or to the like effect. (38)	
Sec. "	Sec. 881. **Committal of accused or admission to bail.**— If it is proved upon oath before such justice that any one apprehended and brought before him on such warrant is the person charged and named in such indictment, such justice shall, without further inquiry or examination, either commit him to prison by a warrant which may be in form 67, or to the like effect, or admit him to bail as provided in other cases: Provided that if it appears that the accused has without reasonable excuse broken his recognizance to appear he shall not in any case be bailable as of right. (38)	
Sec. "	Sec. 882. **Warrant when accused is in gaol for some other offence.** — If it is proved before the justice upon oath that any such accused person is at the time of such application and production of the said certificate as aforesaid confined in any prison for any other offence than that charged in the said indictment, such justice shall issue his warrant directed to the warden or gaoler of the prison in which such person is then confined as aforesaid, commanding him to detain him in his custody until by lawful authority he is removed therefrom. 2. Such warrant may be in form 68, or to the like effect. (38)	

(38) The old section, 648, is divided into these 4 different sections, 879-882.

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PLACE OF TRIAL.

Sec. 650. Sec. **883. Order for removal of prisoner to place of trial.** — If after removal by the Governor in Council or the lieutenant governor in council of any province of any person confined in any gaol to any other place for safe keeping or to any other gaol, a true bill for any indictable offence is returned by any grand jury of the county or district from which any such person is removed against any such person, the court into which such true bill is returned may make an order for the removal of such person from the place for safe keeping or gaol in which he is then confined to the gaol of the county or district in which such court is sitting for the purpose of his being tried in such county or district.

Slightly altered, as here set forth.

Sec. 651. Sec. **884. Change of venue.** (39)

Sec. " Sec. **885. Transmission of record.** (39)

Sec. " Sec. **886. Order sufficient authority for removal of prisoner.** (39)

Sec. " Sec. **887. Order in Quebec for changing place of trial.** (39)

Sec. 640. Sec. **888. Offence committed entirely in one province not triable in another.** — Nothing in this Act authorizes any court in one province of Canada to try any person for any offence committed entirely in another province: Provided that every proprietor, publisher, editor or other person charged with the publication in a newspaper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed. (40)

AMENDMENTS.

Sec. 723. Sec. **889. In case of variance, etc.** — If on the trial of any indictment there appears to be a variance between the evidence given and the

(39) These four new sections, 884-887, are formed from the old section 651, without any material alterations.

(40) Taken from the latter portion of paragraph 1 and from paragraph 2 of the old section 640, — the first part of par. 1 of the old section being made into section 577, *ante*.

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charge in any count in the indictment, either as found or as amended, or as it would have been if amended in conformity with any particular furnished as provided in section eight hundred and fifty-nine, the court before which the case is tried may, if of opinion that the accused has not been misled or prejudiced in his defence by such variance, amend the indictment or any count in it or any such particular so as to make it conformable with the proof.

2. If it appears that the indictment has been preferred under some other Act of Parliament instead of under this Act, or under this instead of under some other Act, or that there is in the indictment, or in any count in it, an omission to state or a defective statement of anything requisite to constitute the offence, or an omission to negative any exception which ought to have been negatived, but that the matter omitted is proved by the evidence, the court before which the trial takes place, if of opinion that the accused has not been misled or prejudiced in his defence by such error or omission, shall amend the indictment or count as may be necessary.

3. The trial in either of these cases may then proceed in all respects as if the indictment or count had been originally framed as amended. (41)

Sec. 723. Sec. 890. **Adjournment, if accused prejudiced.** — If the court is of the opinion that the accused has been misled or prejudiced in his defence by any such variance, error, omission or defective statement, but that the effect of such misleading or prejudice might be removed by adjourning or postponing the trial, the court may in its discretion make the amendment and adjourn the trial to a future day in the same sittings, or discharge the jury and postpone the trial to the next sittings of the court, on such terms as it thinks just.

2. In determining whether the accused has

(41) The old sec. 723 is made into these two new sections 889 and 890.

been misled or prejudiced in his defence the court which has to determine the question shall consider the contents of the depositions, as well as the other circumstances of the case.

3. The propriety of making or refusing to make any such amendment shall be deemed a question for the court, and the decision of the court upon it may be reserved for the Court of Appeal, or may be brought before the Court of Appeal by appeal like any other question of law. (41)

Sec. 724. Sec. 891. **Amendment to be endorsed on record.** — In case, an order for amendment, as provided for in the *two last preceding sections,* is made it shall be endorsed on the record; and all other rolls and proceedings connected therewith shall be amended accordingly by the proper officer and filed with the indictment, among the proper records of the court.

Slightly altered, as here set forth.

The words "not being his wife" in section 301, *ante,* providing for the offence of defiling children under fourteen, is an exception, the failure to negative which in the indictment will not invalidate a conviction thereon where no objection was taken before pleading. Had the objection been taken by the prisoner, before plea, by a demurrer or a motion to quash, the Court might have amended the indictment. (42)

Sec. 612. Sec. 892. **Application to amend or divide counts.** — The accused may, at any stage of the trial, apply to the court to amend or divide any count of an indictment which charges, in the alternative, different matters, acts or omissions stated in the alternative in the enactment describing the offence or declaring the matters, acts or omissions charged to be an indictable offence, or which is double or multifarious, on the ground that it is so framed as to embarrass him in his defence.

2. The court, if it is satisfied that the ends of justice require it, may order any such count to be amended or divided into two or more counts, and, on such order being made, such count shall be so divided or amended,

(42) R. v. Wright, 11 Can. Cr. Cas., 221; 39 N. S. R., 103.

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and thereupon a formal commencement may be inserted before each of the counts into which it is divided. (43)

Sec. 621. Sec. **893. Amendment at trial when property wrongly laid.** — Upon a prosecution for any offence under section 378 or 424, any variance, when the property is laid in a person or corporation, between the statement in the indictment and the evidence adduced may be amended at the trial.

2. If no owner is proved, the indictment may be amended by laying the property in His Majesty. (44)

INSPECTION AND COPIES OF DOCUMENTS.

Sec. 653. Sec. **894. Right of accused to inspect depositions, and to have indictment read.** *Unchanged.*

Sec. 654. Sec. **895. Copy of indictment.** *Unchanged.*

Sec. 655. Sec. **896. Copy of depositions.** *Meaning unchanged.*

Sec. 658. Sec. **897. Documents to be delivered to the accused in a case of treason.** *Unchanged.*

OBJECTIONS, PLEAS AND RECORD.

Sec. 629. Sec. **898. Objections to an indictment for apparent defects to be made by demurrer or motion to quash.** *Meaning unchanged.*

A count of an indictment charging the defendant with having, with intent to defraud, unlawfully made use of and uttered a promissory note, alleged to have been made and signed by one of the defendants by procuration without lawful authority or excuse and with intent to defraud, is defective if it does not also allege that the defendants knew it to have been so made and signed; and such a defect is one of substance, which cannot be amended under the above section, 898. (45)

Sec. 656. Sec. **899. No plea in abatement. Objection to constitution of grand jury may be by motion.** *Meaning unchanged.*

(43) This section, 892, is made up, (with slight alterations), of the latter part of paragraph 1 of the old section 612, and of the whole of paragraph 2 thereof; the first part of par. 1 of the old section being made into section 854, *ante*.

(44) Taken from the latter half of the old section 621, and altered as here set forth; the first half of the old section being made into section 866, *ante*.

(45) R. v. Weir, (No. 5), 3 Can. Cr. Cas., 499.

An objection, that a member of the grand jury, by which the indictment was found, was not indifferent as between the Crown and the accused, because of alleged interest in the subject matter of the prosecution, and was therefore disqualified from acting as a grand juror in respect of such indictment, is not an objection to the "constitution" of the grand jury, which, under the above section 899 must be raised by motion to quash the indictment. (46)

Sec. 657. Sec. **900. Plea. Refusal to plead.**—When the accused is called upon to plead he may plead either guilty or not guilty or such special plea as is in this Part subsequently provided for.

2. If the accused wilfully refuses to plead, or will not answer directly, the court may order the proper officer to enter a plea of not guilty.

Altered, as here set forth.

Sec. 630. Sec. **901. Time to plead to indictment.**

Meaning unchanged.

Sec. 757. Sec. **902. Time to plead in Ontario.** *Unchanged.*

Sec. 758. Sec. **903. Rule to plead when defendant appears by Attorney.** *Unchanged.*

Sec. 759. Sec. **904. Delay in prosecution instituted by Attorney General of Ontario.** *Unchanged.*

Sec. 631. Sec. **905. Special pleas.—Autrefois acquit, autrefois convict, pardon, etc.**—The following special pleas and no others may be pleaded according to the provisions hereinafter contained, that is to say, a plea of *autrefois acquit*, a plea of *autrefois convict*, a plea of pardon, and such pleas in cases of defamatory libel as are hereinafter mentioned.

2. All other grounds of defence may be relied on under the plea of not guilty. (47)

Sec. " Sec. **906. Such pleas may be pleaded together.** — The pleas of *autrefois acquit, autrefois convict*, and pardon may be pleaded together, and if pleaded shall be disposed of before the accused is called on to plead further.

2. If every such plea is disposed of against the accused he shall be allowed to plead not guilty.

(46) R. v. Hayes, (No. 2), 9 Can. Cr. Cas., 101.

(47) These three new sections 905-907 are formed from the old section 631.

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	3. In any plea of *autrefois acquit* or *autrefois convict* it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which such plea is pleaded, indicating the time and place of such acquittal, or conviction. (47).	
Sec. "	Sec. 907. **Issue on pleas of autrefois acquit and autrefois convict.**—On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* to any count or counts, if it appear that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made which might then have been made, have been convicted of all the offences of which he may be convicted on the count or counts to which such plea is pleaded, the court shall give judgment that he be discharged from such count or counts.	
	2. If it appear that the accused might on the former trial have been convicted of any offence of which he might be convicted on the count or counts to which such plea is pleaded, but that he may be convicted on any such count or counts of some offence or offences of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on any such count or counts of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence or offences charged. (47).	
Sec. 632.	Sec. 908. **Evidence of identity of charges.**—On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* the depositions transmitted to the court on the former trial, together with the judge's and official stenographer's notes if available, and the depositions transmitted to the court on the sub-	

sequent charge, shall be admissible in evidence to prove or disprove the identity of the charges.

Slightly altered in the wording.

In a case, in Nova Scotia, where the jury found a verdict of *not guilty* of shooting with intent and of *not guilty* of common assault, but *guilty* of unlawful wounding, (there being in the indictment several counts charging these offences), and a new trial was ordered, on a case reserved at the request of the accused, because of an irregularity occurring upon the trial, it was held that it was competent for the accused, upon the new trial to support a plea of "autrefois acquit" to the charge of unlawful wounding, by shewing that the charge was based on the identical acts of shooting which were the foundation for the other charges. (48).

Sec. 633. Sec. **909. Indictment substantially charging same offence, with circumstances of aggravation; or manslaughter after murder, and vice versa.** *Unchanged.*

Sec. 634. Sec. **910. Plea of justification in libel case.** (49).

Sec. " Sec. **911. Truth of alleged libel not proveable with plea of justification, unless accused is charged with publishing a libel knowing it to be false.** (49).

Sec. **912. Publication by order of legislative body. Stay of proceedings.**—Every person against whom any criminal proceedings are commenced or prosecuted in any manner for or on account of or in respect of the publication of any report, paper, votes or proceedings, by such person or by his servant, by order or under the authority of any legislative council, legislative assembly or house of assembly, may submit to the court in which such proceedings are so commenced or prosecuted, or before any judge of the same, upon twenty-four hours' notice of his intention so to do, to the prosecutor in such proceedings, or to his attorney or solicitor, a certificate under the hand of the speaker or clerk of such legislative council, legislative assembly or house

(48) R. v. Hill, 7 Can. Cr. Cas., 38.

(49) These two new sections, 910 and 911, are formed from the old section 634, without any alteration in meaning.

of assembly, as the case may be, verified by affidavit, stating that the report, paper, votes or proceedings, as the case may be, in respect whereof such criminal proceedings are commenced or prosecuted, was or were published by such person, or by his servant, by order or under the authority of the legislative council, legislative assembly or house of assembly, as the case may be.

2. Such court or judge shall, upon such certificate being so submitted, immediately stay such criminal proceedings, and the same shall thereupon be deemed finally ended, determined and superseded. (50).

Sec. **913.** In any criminal prosecution for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant may submit to the court or judge before which or whom such prosecution is pending a copy of such report, paper, votes or proceedings, verified by affidavit, and the court or judge shall immediately stay such criminal prosecution, and the same shall thereupon be deemed to be finally ended, determined and superseded. (50).

Sec. 726. Sec. **914. Record of conviction or acquittal.**
Meaning unchanged.

Sec. 725. Sec. **915. Form of record in any case of amendment.**
Unchanged.

PROCEEDINGS IN CASE OF CORPORATIONS.

Sec. 635. Sec. **916. Corporations may appear and plead by attorney.** *Unchanged.*

Sec. 636. Sec. **917. No certiorari, etc., necessary to remove indictment..** *Unchanged.*

The case of the King *vs.* the Union Colliery Company, (cited at page 773 of the Author's second edition was affirmed in appeal,—the holding being that although a Corporation cannot be guilty of manslaughter, it may be indicted for and be found guilty of having caused grievous bodily injury by omitting to maintain, in a safe condition, a bridge which it was its duty to maintain, and this notwithstanding that death ensued at once to

(50) Taken from sections 6 and 7 of the R. S. C., 1886, c. 163, set forth in the Appendix to the old Criminal Code.

the person injured, and holding further that a fine is the common law punishment. (50*a*).

Sec. 637. Sec. **918. Notice to Corporation.** *Unchanged.*

Sec. 638. Sec. **919. Proceedings on default.** *Unchanged.*

Sec. 639. Sec. **920. Trial may proceed in absence of Corporation defendant.** *Unchanged.*

JURIES.

Sec. 662. Sec. **921. Qualification of juror.**—Every person qualified and summoned as a grand or petit juror, according to the laws in force for the time being in any province of Canada shall be duly qualified to serve as such juror in criminal cases in that province.

2. Seven grand jurors, instead of twelve, may find a true bill in any province where the panel of grand jurors is not more than thirteen. *Slightly altered.*

Sec. 663. Sec. **922. Jury de medietate linguæ abolished.** *Unchanged.*

Sec. 664. Sec. **923. Mixed juries in the province of Quebec.** *Unchanged.*

Sec. 665. Sec. **924. Mixed juries in Manitoba.** *Unchanged.*

Sec. 666. Sec. **925. Challenging the array.** *Unchanged.* (51)

Sec. " Sec. **926. Trial of ground of challenge.** *Unchanged.* (51).

Since the coming into force of the Criminal Code, it is no longer necessary that the first juror sworn should be added to the triers appointed to decide on the challenge of the second juror. (52).

Sec. 667. Sec. **927. Calling the panel.** The name of each juror on a panel returned, with his number on the panel and the place of his abode, shall be written on a distinct piece of card, and all such pieces of card shall be as nearly as may be of equal size.

2. The cards shall be delivered to the officer of the court by the sheriff or other officer returning the panel, and shall, under

(50*a*) Union Colliery Co. v. R., 31 Can. S. C. R., 81; Can. Ann. Dig., (1901), 104.

(51) Except that the old section (666) is divided into two new sections, (925 and 926), and the form of challenge or objection to the array is now Form 69 (instead of the old form KK).

(52) R. v. Mathurin, 8 Can. Cr. Cas., 1.

the direction and care of the officer of the court, be put together in a box to be provided for that purpose and shall be shaken together.

3. If the array is not challenged or if the triers find against the challenge, the officer of the court shall in open court draw out the said cards one after another, and shall call out the name and number upon each such card as it is drawn, until such a number of persons have answered to their names as in the opinion of the court will probably be sufficient to provide a full jury after allowing for challenges of jurors and directions to stand by.

4. The officer of the court shall then proceed to swear the jury, each juror being called to swear in the order in which his name is so drawn, until, after subtracting all challenges allowed and jurors directed to stand by, twelve jurors are sworn.

5. If the number so answering is not sufficient to provide a full jury such officer shall proceed to draw further names from the box, and call the same in manner aforesaid, until, after challenges allowed and directions to stand by, twelve jurors are sworn. (53)

Sec. " Sec. **928. Calling the jurors who have stood by.** — If by challenges and directions to stand by the panel is exhausted without leaving a sufficient number to form a jury those who have been directed to stand by shall be again called in the order in which they were drawn, and shall be sworn, unless challenged by the accused, or unless the prosecutor challenges them and shows cause why they should not be sworn: Provided that if before any such juror is sworn other jurymen in the panel become available the prosecutor may require the names of such Jurymen to be put into and drawn from the box in the manner hereinbefore prescribed, and such Jurors shall be

(53) These three new sections, 927, 928 and 929, are formed from the old section 667 with slight alterations in the wording.

sworn, challenged, or ordered to stand by, as the case may be, before the Jurors originally ordered to stand by are again called. (53)

Sec. " Sec. 929. **Who shall be the jury to try the indictment.** The twelve men who in manner aforesaid are ultimately drawn and sworn shall be the jury to try the issues on the indictment, and the names of the men so drawn and sworn shall be kept apart by themselves until such jury give in their verdict or until they are discharged; and then the names shall be returned to the box, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried.

2. If the prosecutor and accused do not object thereto, the court may try any issue with the same jury that has previously tried or been drawn to try any other issue, without their names being returned to the box and redrawn, or if the parties, or either of them, object to some one or more of the jurors forming such jury, or the court excuses any one or more of them, then the court may order such persons to withdraw, and may direct the requisite number of names to make up a complete jury to be drawn, and the persons whose names are so drawn shall be sworn.

3. An omission to follow the directions of this or the two last preceding sections shall not affect the validity of the proceedings. (53)

Sec. 668. Sec. 930. **A ground of challenge that Jurors' names are not on panel is tried upon the voir dire.** If the ground of challenge is that the Jurors' names do not appear on the panel, the issue shall be tried by the Court on the *voir dire* by the inspection of the panel, and such other evidence as the Court thinks fit to receive. (54)

Sec. " Sec. 931. **Trial of challenge upon other grounds.** — If the ground of challenge be other than as last

(54) Taken from paragraph 7 of the old section 668.

aforesaid, the two jurors last sworn, or if no jurors have then been sworn, then two persons present whom the court may appoint for that purpose shall be sworn to try whether the juror objected to stands indifferent between the King and the accused, or has been convicted as hereinbefore specified or is an alien, as the case may be.

2. If the court or the triers find against the challenge the juror shall be sworn.

3. If they find for the challenge he shall not be sworn.

4. If, after what the court considers a reasonable time, the triers are unable to agree, the court may discharge them from giving a verdict, and may direct other persons to be sworn in their place. (55)

Sec. 668. Sec. **932. Peremptory challenges by accused.** — Every one indicted for treason or for any offence punishable with death is entitled to challenge twenty jurors peremptorily.

2. Every one indicted for any offence other than treason, or an offence punishable with death, for which he may be sentenced to imprisonment for more than five years, is entitled to challenge twelve jurors peremptorily.

3. Every one indicted for any other offence is entitled to challenge four jurors peremptorily. (56)

On an indictment for unlawful wounding, in which is included a separate count for assault, the accused is not entitled to claim the total number of peremptory challenges of jurors as he would have, if the charges were contained in two separate indictments, but is limited to the largest number allowed in respect of any single count. (57)

Sec. 668. Sec. **933. Peremptory challenges and stand-asides by the Crown.**—The Crown shall have power to challenge four Jurors peremptorily, and may direct any number of Jurors not peremptorily challenged by the accused to stand by until all the Jurors have been

(55) Taken from paragraph 8 of the old section 668.
(56) Taken from paragraphs 1, 2 and 3 of the old section 668.
(57) R. v. Turpin, 8 Can. Cr. Cas., 59.

called who are available for the purpose of trying that indictment.

2. The accused may be called upon to declare whether he challenges any Jurors peremptorily or otherwise, before the prosecutor is called upon to declare whether he requires such Juror to stand by, or challenges him either for cause or peremptorily. (58).

A direction to a juror to "stand by", at the instance of the Crown, is, in substance, a deferred challenge for cause, and cannot be made after the juror has, by direction of the clerk of the court, taken the book to be sworn. (59).

Sec. 669. Sec. **934. No right in libel cases to stand jurors aside.** *Unchanged.*

Sec. 668. Sec. **935. Challenges for cause.**—Every prosecutor and every accused person is entitled to any number of challenges on the ground,—

(*a*) that any juror's name does not appear in the panel: Provided that no misnomer or misdescription shall be a ground of challenge if it appears to the court that the description given in the panel sufficiently designates the person referred to; or,

(*b*) that any juror is not indifferent between the King and the accused; or.

(*c*) that any juror has been convicted of any offence for which he was sentenced to death or to any term of imprisonment with hard labour or exceeding twelve months; or,

(*d*) that any juror is an alien.

2. No other ground of challenge for cause than those mentioned in this section shall be allowed. (60)

The fact that a juror has made remarks indicating a leaning for or against an accused will not of itself furnish ground for a new trial where the verdict does justice, and there is no reason to suppose that the juror's opinion was not derived from the evidence.

Where a juror has been challenged for cause of favor the finding

(58) Taken from paragraphs 9 and 10 of the old section 668.
(59) R. v. Barsalou, (No. 1), 4 Can. Cr. Cas., 343.
(60) Taken from paragraphs 4 and 5 of the old section 668.

of the triers as to his competency is conclusive although the accused and his counsel were not then aware of remarks alleged to have been made by the juror which would tend to shew a bias against the prisoner. Upon grounds of public policy, the testimony or the evidence or other sworn statement of a juror will not be received to impeach a verdict nor to shew that the jurors agreed on their verdict by a majority; and for the same reasons a juror cannot shew that he did not agree to the verdict as rendered or that he consented to it without concurring in it, in order to secure his discharge. But affidavits are admissible from the other jurors to support and confirm the presumption that the proceedings of the jury were correct, and that there has been no misconduct. (61) And these holdings were confirmed in appeal. (62)

Sec. 668. Sec. **936. Challenge may be required to be in writing.** If a challenge on any of the grounds aforesaid is made, the court may, in its discretion, require the party challenging to put his challenge in writing.

2. The challenge may be in the form 70, or to the like effect.

3. The other party may deny that the ground of challenge is true. (63)

Sec. 670. Sec. **937. Peremptory challenge in case of mixed jury.** *Unchanged in meaning.*

Sec. 671. Sec. **938. Accused persons joining or severing in their challenges.** *Unchanged.*

Sec. 672. Sec. **939. Ordering a tales, when panel exhausted and a complete jury cannot be had therefrom.** *Meaning unchanged.*

ARRAIGNMENT AND TRIAL.

Sec. 642. Sec. **940. No trial on a Coroner's inquisition.** *Unchanged.*

Sec. 652. Sec. **941. Bringing up prisoner for arraignment.** *Unchanged.*

Sec. 659. Sec. **942. Right to full defence.** *Unchanged.*

Where an English speaking prisoner in the Province of Quebec is represented at his trial by counsel speaking the French language, and no request is made for a translation of the testimony of French-speaking witnesses into English, for the benefit of the prisoner, it has been held that the failure to so translate as to

(61) R. v. Carlin, Que. Jud. Rep., 12 K. B., 368; 6 Can. Cr. Cas. 365;
(62) R. v. Carlin, 6 Can. Cr. Cas., 507.
(63) Taken from par. 6 of the old section 668.

enable the prisoner to personally understand the evidence is not a limitation of his right to make "full answer and defence" to the charge, and will not invalidate a conviction. (64).

Sec. 660. Sec. **943. Presence of accused at trial.**

Unchanged.

Sec. 661. Sec. **944. Prosecutor's right to sum up.**—If an accused person, or any one of several accused persons being tried together, is defended by counsel, such counsel shall, at the end of the case for the prosecution, declare whether he intends to adduce evidence or not on behalf of the accused person for whom he appears; and if he does not thereupon announce his intention to adduce evidence, the counsel for the prosecution may address the jury by way of summing up.

2. Upon every trial for an indictable offence, the counsel for the accused, or the accused if he is not defended by counsel, shall be allowed, if he thinks fit, to open the case for the defence, and after the conclusion of such opening to examine such witnesses as he thinks fit, and when all the evidence is concluded to sum up the evidence.

3. If no witnesses are examined for the defence the counsel for the accused, or the accused in case he is not defended by counsel, shall have the privilege of addressing the jury last, otherwise such right shall belong to the counsel for the prosecution: Provided, that the right of reply shall be always allowed to the Attorney General or Solicitor General, or to any counsel acting on behalf of either of them.

Slightly altered, as here set forth.

It has been held, in Manitoba, that, where no evidence is offered for the defence, the counsel for the defence has the right to the last address to the jury, notwithstanding that the prosecution is conducted by counsel acting for the Attorney General, and that the "right of reply" permitted, by section 661, (now section 944), to the Attorney General or to counsel acting on his behalf is the right to again address the jury at the close of the evidence

(64) R. v. Long, 5 Can. Cr. Cas., 493.

and before the address of the defendant's counsel, when the defence offers no evidence. (65).

But the contrary has since been held in Ontario, in a case in which it was decided that a crown prosecutor acting on behalf of the Attorney General of the province has a right of reply, although no witnesses are called for the defence. (66).

The informant at whose instance an indictment has been preferred for perjury has no *locus standi* to appear by counsel and take part in the trial, without the consent of the Crown. (67).

Where several persons are jointly indicted, the order in which each of them shall enter upon his defence is generally subject to the discretion of the trial judge. Where there is a difference in the degree of criminality with respect to the charge made against several persons jointly indicted, they should be called upon for their defence, the greater before the lesser, according to the seriousness of the charge against each, as disclosed both by the indictment and by the evidence for the prosecution, *e. g.*, the principal before the accessory, and the thief before the receiver. Where there appears no such difference in degree of criminality, in respect of several persons jointly indicted, the order of defence is the order in which their names appear in the indictment. (68).

The evidence of the witnesses called on behalf of any defendant is effective as regards the other defendants, whether beneficially or adversely, and counsel for the other defendants may, therefore, cross-examine such witnesses before their cross-examination by counsel for the prosecution. (69).

Sec. 673. Sec. **945. Continuous trial. Jurors not to separate in capital cases.**—The trial shall proceed continuously subject to the power of the court to adjourn it.

2. The court may adjourn the trial from day to day, and if in its opinion the ends of justice so require, to any other day in the same sittings.

3. Upon every adjournment of a trial under this section, or under any other section, the court may, if it thinks fit, direct that during the adjournment the jury shall be kept together, and proper provision made for preventing the jury from holding

(65) R. v. LeBlanc, 6 Can. Cr. Cas., 348.
(66) R. v. Martin, 9 Can. Cr. Cas., 371.
(67) R. v. Gilmore, 7 Can. Cr. Cas., 219.
(68) R. v. Barsalou, 4 Can. Cr. Cas., 446.
(69) *Ib.*

communication with any one on the subject of the trial.

4. Such direction shall be given in all cases in which the accused may upon conviction be sentenced to death.

5. In other cases, if no such direction is given, the jury shall be permitted to separate.

6. No formal adjournment of the court shall hereafter be required, and no entry thereof in the Crown book shall be necessary. *Altered, as here set forth.*

The trial judge is not bound to exclude the jury during any part of a criminal trial: and the fact that an application to exclude an alleged dying declaration was made in the presence of the jury, and that, on the cross-examination of a witness in reference to it, parts of the declaration were read by counsel cross-examining, is not a ground for a new trial, when the declaration was ruled out and explicitly withdrawn from the jury. (70).

Sec. 674. Sec. **946. Jurors may have fire and refreshments.** *Unchanged.*

Sec. 705. Sec. **947. Libel in extract from or abstract of paper published by or under the authority of a legislative body.** *Unchanged.*

Sec. 706. Sec. **948. Evidence in case of polygamy.** *Unchanged in meaning.*

Sec. 711. Sec. **949. Full offence charged. Attempt proved.** *Unchanged.*

Sec. 712. Sec. **950. Attempt charged. Full offence proved.** *Meaning unchanged.*

Sec. 713. Sec. **951. Offence charged. Part only proved.** *Meaning unchanged.*

Sec. 714. Sec. **952. On indictment for murder of a child, conviction may be of concealment of birth.** *Meaning unchanged.*

Sec. 714*a*. Sec. **953. Charge for stealing, conviction for fraudulently dealing with cattle.** — When an offence under section 369 is charged and not proved, but the evidence establishes an offence under section 392, the accused may be convicted of such latter offence and punished accordingly. *Altered slightly, as here set forth.*

(70) R. v. Aho, 8 Can. Cr. Cas., 453.

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Sec. 715.	Sec. **954. Trial of joint receivers.**	*Unchanged.*
Sec. 718.	Sec. **955. Trial for coinage offences.**	*Unchanged.*
Sec. 719.	Sec. **956. Verdict, in cases of libel, may be guilty or not guilty generally.**	*Unchanged.*
Sec. 720.	**Impounding forged documents.**	*Omitted here* (71).
Sec. 721.	Sec. **957. Destroying counterfeit coin.**	*Unchanged.*
Sec. 722.	Sec. **958. View.**	*Meaning unchanged.*

In a summary proceeding for an alleged sale of liquor, a conviction will be quashed, if, after the close of the evidence, the magistrate went alone and took a view of the place of sale and so stated when giving his judgment. (72).

Sec. 727. Sec. **959. Jury retiring to consider verdict.**—If the jury retire to consider their verdict they shall be kept under the charge of an officer of the court in some private place, and no person other than the officer of the court who has charge of them shall be permitted to speak or to communicate in any way with any of the jury without the leave of the court.

2. Disobedience to the directions of this section shall not affect the validity of the proceedings.

3. If such disobedience is discovered before the verdict of the jury is returned, the court, if it is of opinion that such disobedience *might lead to a miscarriage of justice*, may discharge the jury and direct a new jury to be sworn or empanelled during the sitting of the court, or postpone the trial on such terms as justice may require.

Slightly altered in the wording.

Sec. 728. Sec. **960. Jury discharged, if unable to agree.**

When the jury is polled and one or more jurors dissent from the verdict as announced by the foreman, it is not necessary that a disagreement should be recorded and the jury discharged; they may be sent back for further deliberation, and a unanimous verdict, then brought in, is regular. (73).

Upon the discharge of a jury, for disagreement, the court may either traverse the case, to the next sittings, for the second trial, or may have a new jury sworn from the same panel as the first

(71) And made into section 33 of the new *Canada Evidence Act, post.*
(72) *Re* Sing Koe, 5 Can. Cr. Cas., 86.
(73) R. v. Burdell, 10 Can. Cr. Cas., 365; 11 Ont. L. R., 440.

jury, and proceed with the second trial at the same sittings of the court. The reference, in the above section, 930, to the "impanelling" of a new jury, is to the selection of the twelve who are to try the charge and not to the impanelling of jurors under the venire to the sheriff. A second venire is unnecessary to constitute a second jury qualified to re-try the case at the same sittings. Upon such second trial at the same sittings, it is not necessary to ask the accused to plead again to the indictment or to again read the indictment to him. (74).

Sec. 729. Sec. **961. Taking verdict or other proceeding of the court on Sunday not invalid.** *Unchanged.*

Sec. 732. Sec. **962. Stay of proceedings by Attorney General.** *Unchanged.*

The Attorney General may exercise the power conferred by this section of entering a *nolle prosequi* to an indictment for criminal libel, although the proceedings were instituted by a private prosecutor; and the discharge of the accused, upon the entry of a *nolle prosequi*, by the Attorney General, to an indictment for criminal libel, is a judgment for the defendant entitling him, under section 1045, to his costs against the private prosecutor. (75).

Sec. 676. Sec. **963. Proceedings when a previous offence is charged.** (76).

Sec. " Sec. **964. Evidence of character in such a case.**(76).

Sec. 675. Sec. **965. Saving of power of Court.** *Unchanged.*

DEFENCE OF INSANITY.

Sec. 736. Sec. **966. Insanity of accused at time of commission of offence.** *Meaning unchanged.*

Sec. 737. Sec. **967. Insanity of accused on arraignment or trial.** *Meaning unchanged.*

Sec. 739. Sec. **968. Insanity of person brought up to be discharged for want of prosecution.** *Meaning unchanged.*

Sec. 740. Sec. **969. Custody of insane persons.** *Unchanged.*

Sec. 741. Sec. **970. Insanity of person imprisoned.** *Unchanged.*

WITNESSES AND ATTENDANCE.

Sec. 677. Sec. **971. Attendance of witnesses.** *Unchanged.*

Sec. 678. Sec. **972. Compelling attendance of witnesses.** *Meaning unchanged.*

(74) R. v. Gaffin, 8 Can. Cr. Cas., 194.

(75) R. v. Blackley, 8 Can. Cr. Cas., 405.

(76) These two sections 963 and 964 are formed from the old section 676 without any material alteration.

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Sec. 678*a*.	Sec. 973. **Warrant against witness in the first instance.**	*Meaning unchanged.*
Sec. 679.	Sec. 974. **Witness in Canada but beyond jurisdiction of court may be subpoenaed.** (77).	
Sec. "	Sec. 975. **Proceedings when subpoena disobeyed.**(77).	
Sec. "	Sec. 976. **Courts of the several provinces auxiliary to one another.** (77).	
Sec. 680.	Sec. 977. **Procuring attendance of witness who is a prisoner.**—When the attendance of any person confined in any prison in Canada, or upon the limits of any gaol, is required in any court of criminal jurisdiction in any case cognizable therein by indictment, the court before whom such prisoner is required to attend, or any judge of such court or of any superior court or county court, or any chairman of General Sessions, may, before or during any such term or sittings at which the attendance of such person is required, make an order upon the warden or gaoler of the prison, or upon the sheriff or other person having the custody of such prisoner,— (*a*) to deliver such prisoner to the person named in such order to receive him; or, (*b*) to himself convey such prisoner to such place. 2. The warden, gaoler or other person aforesaid, having the custody of such prisoner, when so required by order as aforesaid, upon being paid his reasonable charges in that behalf, or the person to whom such prisoner is required to be delivered as aforesaid, shall, according to the exigency of the order, convey the prisoner to the place at which he is required to attend and there produce him, and then to receive and obey such further order as to the said court seems meet.	*Altered, as here set forth.*

Witnesses, (whether subpoenaed or not), as well as parties are protected from arrest while going to the place of trial, while attend-

(77) These three new sections,—974, 975 and 976,—are formed from the old section 679 without material alteration.

ing there for the purpose of testifying in the cause, and while returning home; (78) and this privilege extends to a witness coming from abroad without a subpoena. (79) But it has been held that the privilege from arrest allowed to a witness summoned before a Court sitting in another judicial district from that in which he lives, does not apply where he is charged with a criminal offence committed by him during the time in which he is in such district for the purpose of giving evidence. (80)

EVIDENCE ON TRIAL.

Sec. 690. Sec. **978. Admissions may be taken on trial.**

Unchanged.

Where two prisoners are being jointly tried for an offence, a voluntary admission made by one of them is evidence against himself only, and if it implicates a fellow prisoner the trial judge should warn the jury that the statement is evidence only against the person making it and should not be considered in weighing the evidence against the fellow prisoner. It seems, moreover, that where the Crown intends to make use of such a confession, the prisoner jointly charged, and likely to be implicated by such a statement of the other accused, would have ground for applying, before the commencement of the trial, to be tried separately, so as to prevent the statement being put in as evidence at his trial, even with the judge's warning. (81)

This section permits an admission of any "fact" to be made, at the trial, by the prisoner or his counsel, so as to dispense with proof, but the section does not apply to an alleged consent of prisoner's counsel to put in, as evidence, previous depositions of other persons which are not properly evidence against the prisoner. (82)

Evidence given on the trial of another person, including the evidence of the prisoner then called as a witness, may, with the consent of the prisoner's counsel, be admitted in evidence both for and against the prisoner. (83)

At the trial of an indictable offence, the presiding judge may with the consent of counsel for the Crown and for the accused respectively, adjourn the hearing to a private house within the same county for the purpose of taking there the evidence of a witness,

(78) Meekins v. Smith, 1 H. Bl., 636; Randall v. Gurney, 3 B. and Ald., 252; Walpole v. Alexander, 3 Doug., 45.
(79) 1 Tidd's Prac., 195, 196; Greenleaf on Evid., 16 Ed., vol. 1, 507.
(80) Ewan, *Ex p.*, 2 Can. Cr. Cas., 270.
(81) R. v. Martin, 9 Can. Cr. Cas., 371.
(82) R. v. Brooks, 11 Can. Cr. Cas., 188; 11 Ont. L. R., 525.
(83) R. v. Fox, 7 Can. Cr. Cas., 457.

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who is too ill to be moved therefrom, and may order that the Court and jury proceed there for that purpose. The accused is bound by the consent of his counsel in such a matter, which does not go to the jurisdiction of the Court. (84)

See. 691.	Sec. 979.	**Certificate of former trial upon the trial of an indictment for perjury.** *Unchanged.*
See. 692.	Sec. 980.	**Evidence of coin being false or counterfeit.** *Meaning unchanged.*
See. 693.	Sec. 981.	**Evidence on proceedings for advertizing counterfeit money.** *Unchanged in meaning.*
See. 694.	Sec. 982.	**Proof of previous conviction.** *Unchanged.*
See. 695.		**Examination of witness as to previous conviction. Proof of previous conviction of witness.** *Omitted here.* (85)
See. 696.		**Proof of attested instrument.** *Omitted here.* (86)
See. 697.	Sec. 983.	**Evidence at trial for child murder.** *Unchanged.*
See. 698.		**Handwriting comparison.** *Omitted here.* (87)
See. 699.		**Contradiction of party's own witness, when adverse.** *Omitted here.* (88)
See. 700.		**Cross examination as to previous written statements.** *Omitted here.* (89)
See. 701.		**Cross examination as to previous oral statements.** *Omitted here.* (90)
See. 701*a*.	Sec. 984.	**Proof of age of boy, girl, child, etc.** — To prove the age of a boy, girl, child or young person for the purposes of sections two hundred and eleven, two hundred and fifteen, two hundred and forty-two, two hundred and forty-three, two hundred and forty-five, two hundred and ninety-four, three hundred and one, three hundred and two, three hundred and fifteen and three hundred and sixteen, any entry or record by an incorporated society or its officers having had the control or care of the boy, girl, child or young per-

(84) R. v. Rogers, 6 Can. Cr. Cas., 419.
(85) Made into section 12 of the new *Canada Evidence Act, post.*
(86) See section 32 of the new *Canada Evidence Act, post.*
(87) See section 8 of the new *Canada Evidence Act, post.*
(88) Made into section 9 of the new *Canada Evidence Act, post.*
(89) Made into section 10 of the new *Canada Evidence Act, post.*
(90) Made into section 11 of the new *Canada Evidence Act, post.*

son at or about the time of the boy, girl, child or young person being brought to Canada, if such entry or record has been made before the alleged offence was committed, shall be *prima facie* evidence of such age.

2. In the absence of other evidence, or by way of corroboration of other evidence, the judge, or, in cases where an offender is tried with a jury, the jury before whom an indictment for the offence is tried, or the justice before whom a preliminary inquiry thereinto is held, may infer the age from the appearance of the boy, girl, child or young person.

Altered, as here set forth.

Sec. 702. Sec. **985. Presence of gaming instruments, proof of gaming character of house.** — When any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any house, room or place suspected to be used as a common gaming house, and entered under a warrant or order issued under this Act, or about the person of any of those who are found therein, it shall be *prima facie* evidence, on the trial of a prosecution under section two hundred and twenty-eight or section two hundred and twenty-nine, that such house, room or place is used as a common gaming house, and that the persons found in the room or place where such instruments of gaming are found were playing therein, although no play was actually going on in the presence of the officer entering the same under such warrant or order, or in the presence of the persons by whom he is accompanied.

Slightly altered, as here set forth.

Sec. 703. Sec. **986. Other evidence of house being a common gaming house.** — In any prosecution under section two hundred and twenty-eight for keeping a common gaming house, or under section two hundred and twenty-nine for playing or looking on while any other person is playing in a common gaming house, it shall be *prima facie* evidence that a house,

room or place is used as a common gaming house, and that the persons found therein were unlawfully playing therein, —

(*a*) if any constable or officer authorized to enter such house, room or place, is wilfully prevented from, or obstructed or delayed in entering the same or any part thereof; or,

(*b*) if any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing or destroying any instruments of gaming.

Altered, as here set forth.

Sec. 704. Sec. 987. **Evidence in cases of gaming in stocks or merchandise.** *Unchanged.*

Sec. 707. Sec. 988. **Evidence of stealing ores or minerals.** *Unchanged.*

Sec. 707*a*. Sec. 989. **Evidence of property in cattle, cattle brands or marks.** — In any criminal prosecution, proceeding or trial, the presence upon any cattle of a brand or mark, which is duly recorded or registered under the provisions of any Act, ordinance or law, shall be *prima facie* evidence that such cattle are the property of the registered owner of such brand or mark.

2. When a person is charged with theft of cattle, or with an offence under paragraph (*a*) or paragraph (*b*) of section three hundred and ninety-two respecting cattle, possession by such person or by others in his employ or on his behalf of such cattle bearing such a brand or mark of which the person charged is not the registered owner, shall throw upon the accused the burden of proving that such cattle came lawfully into his possession or into the possession of such others in his employ or on his behalf, unless it appears that such possession by others in his employ or on his behalf was without his knowledge and without his authority, sanction or approval.

Slightly altered, as here set forth.

Sec. 708. Sec. **990. Evidence of property in timber. Evidence of theft thereof.** — In any prosecution, proceeding or trial for any offence under section three hundred and ninety-four a timber mark, duly registered under the provisions of the Timber Marking Act, on any timber, mast, spar, saw-log or other description of lumber, shall be *prima facie* evidence that the same is the property of the registered owner of such timber mark.

2. Possession by the accused, or by others in his employ or on his behalf, of any such timber, mast, spar, saw-log or other description of lumber so marked, shall, in all cases, throw upon him the burden of proving that such timber, mast, spar, saw-log or other description of lumber came lawfully into his possession, or into the possession of such others in his employ or on his behalf.

Slightly altered, as here set forth.

Sec. 709. Sec. **991. Evidence of enlistment in cases relating to public stores.** — In any prosecution, proceeding or trial under sections four hundred and thirty-three to four hundred and thirty-seven inclusive for offences relating to public stores, proof that any soldier, seaman or marine was actually doing duty in His Majesty's service shall be *prima facie* evidence that his enlistment, entry or enrolment has been regular.

2. If the person charged with the offence relating to public stores mentioned in section four hundred and thirty-five was, at the time at which the offence is charged to have been committed, in His Majesty's service or employment, or a dealer in marine stores, or a dealer in old metals, knowledge on his part that the stores to which the charge relates bore the marks described in section four hundred and thirty-two shall be presumed until the contrary is shown.

Slightly altered, as here set forth.

Sec. 710. Sec. **992. Evidence in cases of fraudulent marks on merchandise.**—In any prosecution, proceeding or trial for any offence under Part VII,

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relating to fraudulent marks on merchandise, if the evidence relates to imported goods evidence of the port of shipment shall be *primâ fâcie* evidence of the place or country in which the goods were made or produced. *Altered by omitting par. 2 of the old section.*

Sec. 716. Sec. **993.** **Proceedings against receivers. Evidence of possession of property previously stolen, etc.** *Meaning unchanged.*

Sec. 717. Sec. **994.** **Proceedings against receivers. Proof of previous conviction as evidence of knowledge in present instance.** *Meaning unchanged.*

EVIDENCE TAKEN APART FROM TRIAL.

Sec. 681. Sec. **995.** **Evidence, under commission, of person dangerously ill.** *Meaning unchanged.*

Sec. 682. Sec. **996.** **Presence of prisoner at examination under such commission.** *Meaning unchanged.*

Sec. 683. Sec. **997.** **Evidence may be taken out of Canada under commission.** *Unchanged.*

The evidence taken under a commission is admissible as well at the preliminary enquiry as before the Grand Jury and at the trial of the indictment when found. The order should provide for the return of the commission into the court from which it issues and should not direct the transmission of the evidence by the commissioner to the magistrate holding the preliminary enquiry. (91)

A commission to take the evidence of witnesses abroad in a libel case is properly ordered at the trial where the evidence to be taken on such commission relates wholly to a plea of justification just entered of record, the defendant not being bound to anticipate his plea to the indictment and being entitled to all of the time up to his arraignment to consider whether he would plead justification; so that the application for the commission is rightly made after and not before plea. (92)

An order may be made for taking, in Canada, under commission, the evidence of a material witness who ordinarily resides out of Canada, but who is temporarily within the jurisdiction and about to return to his own country. (93)

(91) R. v. Venot, 6 Can. Cr. Cas., 471.
(92) R. v. Nicol, 5 Can. Cr. Cas., 31.
(93) R. v. Baskett, 6 Can. Cr. Cas., 61.

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ADMITTING, ON TRIAL, EVIDENCE PREVIOUSLY TAKEN.

Sec. 686. Sec. **998. Deposition, taken under commission, of a sick person, may, under certain circumstances, be read in evidence at trial.** — If the statement of a sick person has been taken by a commissioner as provided in section nine hundred and ninety-five, and upon the trial of any offender for any offence to which the same relates, the person who made the statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to attend at the trial to give evidence, such statement may, upon the production of the judge's order appointing the commissioner, be read in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the commissioner by or before whom it purports to have been taken, and it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement was served upon the person, whether prosecutor or accused, against whom it is proposed to be read in evidence, and that such person or his counsel or solicitor had, or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same. *Slightly altered in the wording.*

Sec. 687. Sec. **999. Deposition on preliminary enquiry may, in certain events, be read in evidence, at trial.** — If upon the trial of an accused person such facts are proved upon oath or affirmation that it can be reasonably inferred therefrom that any person, whose evidence was given at any former trial upon the same charge or whose deposition has been theretofore taken in the investigation of the charge against such accused person, is dead, or so ill as not to be able to travel, or is absent from Canada, and if it is proved that such evidence was given or such deposition was taken in the presence of the person accused, and that he or his counsel or solicitor if

present had a full opportunity of cross-examining the witness, then if the evidence or deposition purports to be signed by the judge or justice before whom the same purports to have been taken, it shall be read as evidence in the prosecution, without further proof thereof, unless it is proved that such evidence or deposition was not in fact signed by the judge or justice purporting to have signed the same.

Slightly altered, as here set forth.

The absence from Canada, required by this section to be shewn in respect of a witness, before his deposition on the preliminary enquiry can be used as evidence for the prosecution at the trial, must be of a permanent nature; a mere temporary absence is insufficient; and the onus of shewing that the witness' absence from Canada is not merely temporary is upon the prosecution. (94)

It has been held, in Nova Scotia, that a finding that the witness is "absent from Canada" is justified, if it be proved that he shipped as a sailor on a sealing voyage, which would ordinarily last six months, and that he was seen on the vessel just before its departure three weeks before the trial. (95)

Evidence that a witness at the preliminary enquiry was a corporal in the N. W. Mounted Police, that he had been sworn in as a member of "Strathcona's Horse," for active Service in the South African war, that he had left the post at which he had been stationed to join the latter force, and that, in the opinion of the deponent, if he had left the latter force he would have returned to the former post, as in fact it would have been his duty to do, which fact would thereupon have become known to the deponent, was sufficient evidence of the absence of such witness from Canada to justify the admission, as evidence at the trial, of the deposition of such witness taken at the preliminary enquiry. (96)

Absence of a witness from Canada is not sufficiently proved under the above section to admit in evidence his deposition taken at the preliminary enquiry, by shewing the receipt of letters and telegrams from him despatched from an adjoining territory of the United States, the latest despatch being six days prior to the trial. (97)

A deposition taken at a coroner's inquest is not admissible as ev-

(94) R. v. McCullough, 8 Can. Cr. Cas., 278. See R. v. Scaffe, 20 L. J. M. C., 229.
(95) R. v. Deloe, 11 Can. Cr. Cas., 224.
(96) R. v. Forsythe, 5 Can. Cr. Cas., 475.
(97) R. v. Trefry, 8 Can. Cr. Cas., 297.

idence on the homicide trial, on the deponent's death, illness or absence from Canada, as a deposition on a preliminary enquiry would be, and the above section, 999, does not apply to depositions taken before coroners. (98)

But the signed deposition of a witness at a coroner's inquest may be used on the cross-examination of the witness at the homicide trial for the purpose of contradicting the witness' testimony, although it is not certified to have been read over to the deponent and although it does not appear thereby that the deponent had no further testimony to add. (99)

Sec. 688. Sec. **1000. Depositions may be used in trial for other offences.** *Unchanged.*

Sec. 689. Sec. **1001. Evidence of accused's statement before the justice.** *Unchanged.*

CORROBORATION.

Sec. 684. Sec. **1002. Cases in which evidence of one witness must be corroborated.** — No person accused of any offence under any of the hereunder mentioned sections shall be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused:

(*a*) Treason, Part II., section seventy-four;

(*b*) Perjury, Part IV., section one hundred and seventy-four;

(*c*) Offences under Part V., sections two hundred and eleven to two hundred and twenty inclusive;

(*d*) Procuring feigned marriage, Part VI., section three hundred and nine;

(*e*) Forgery, Part VII., sections four hundred and sixty-eight to four hundred and seventy inclusive.

Slightly altered, as here set forth.

On a charge of allowing a girl under eighteen to be upon premises for immoral purposes, the evidence of the girl proving that she shared with the proprietor the money she obtained by prostitution there carried on is sufficiently corroborated, by the evidence of another witness tending to shew that the place was a bawdy house. (100)

(98) R. v. Laurin, (No. 3), 5 Can. Cr. Cas., 548.

(99) R. v. Laurin, (No. 2), 5 Can. Cr. Cas., 545; R. v. Laurin, (No. 3), *supra*.

(100) R. v. Brindley, 6 Can. Cr. Cas., 196.

On a charge of criminal seduction under promise of marriage, corroboration is essential; but the corroboration need not be as to every fact and it is sufficient if it confirms the belief that the prosecutrix is speaking the truth. (101)

Evidence not in support of the charges laid in the indictment, but referring to charges not laid cannot be received as corroborative evidence; and evidence of what the child told others could not be received. (102)

It has been held that the corroborative evidence required to support a charge of seducing a girl under 16 years of age is not necessarily that of another witness or witnesses to the acts charged. (103)

Where a prisoner is charged with forgery by writing three false signatures as endorsements on the back of a promissory note, and each of the parties, whose signatures are thus made to appear, swears that the signature purporting to be his is not his and is a forgery, there is corroborative evidence to support the charge. (103*a*)

Sec. 685. Sec. **1003. Evidence of child not under oath may be received in certain cases, but must be corroborated.** *Unchanged.* (104)

Upon the trial of a charge of attempted carnal knowledge of a girl under fourteen who is too young to understand the nature of an oath, a conviction for that offence is not warranted, unless her evidence not under oath is corroborated by some other material evidence *implicating the accused;* but the accused may be convicted of common assault upon the charge so laid if there be, — as required by section 25 (now section 16) of the Criminal Code, — corroboration merely by some other material evidence, the words *"implicating the accused"* not being in section 16 of the *Canada Evidence Act.* (105)

The trial judge has no power to direct that the official interpreter appointed by the government shall not act in the trial of an indictment because of a charge brought forward by the counsel for the defence that the interpreter had previously been actively engaged in assisting the prosecution. (105 *a*)

Where it is sought to examine a witness through an interpreter,

(101) R. v. Daun, 11 Can. Cr. Cas., 244; 12 Ont. L. R., 227.
(102) R. v. South, 39 Can. L. J., 539.
(103) R. v. Burr, 8 O. W. R., 703; 27 Can. L. T., 41.
(103*a*) Houle v. R., Que. Jud. Rep., 15 K. B., 170.
(104) See section 16 of the *Canada Evidence Act, post,* for a similar provision.
(105) R. v. DeWolfe, 9 Can. Cr. Cas., 38.
(105*a*) R. v. Wong On, (No. 1), 8 Can. Cr. Cas., 342.

in a foreign tongue, the opposing counsel may be given leave first to question the witness in English to test the witness' competency to speak that language. When a foreign witness examined through an interpreter has some knowledge of English, the counsel entitled to cross examine may do so in English, without the intervention of the interpreter, and may also, if he chooses, put questions through the interpreter. (105*b*)

For annotations as to the cross examination of an accused who testifies on his own behalf, as to the cross examination of a witness upon his previous written and oral statements, as to evidence of character, etc., see comments under sections 4, 9, 10, 11 and 12, of the *Canada Evidence Act, post.*

SENTENCE, ARREST OF JUDGMENT AND APPEAL.

Sec. 733. Sec. **1004. Question to be put to accused, if found guilty.**—If the jury find the accused guilty, or if the accused pleads guilty, the judge presiding at the trial shall ask him whether he has anything to say why sentence should not be passed upon him according to law: Provided that the omission so to ask shall have no effect on the validity of the proceedings. (106)

Sec. 626. Sec. **1005. Sentence justified if sustained by any one of several counts.**—If one sentence is passed upon any verdict of guilty on more counts of an indictment than one, the sentence shall be good if any of such counts would have justified it. (107)

Sec. 733. Sec. **1006. Where sentence carried out when venue changed.** — When any sentence is passed upon any person after a trial had und - an order for changing the place of trial, the Court may in its discretion, either direct the sentence to be carried out at the place where the trial was had or order the person sentenced to be removed to the place where his trial would have been had but for such

(105*b*) R. v. Wong On, (No. 2), 8 Can. Cr. Cas., 343.

(106) Formed from the first paragraph of the old section 733.

(107) Taken from par. 5 of the old section 626, — the other paragraphs of that old section being made into sections, 856, 857 and 858, *ante.*

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order, so that the sentence may be there carried out. (108)

Sec. " Sec. 1007. **Motion in arrest of judgment.** — The accused may at any time before sentence move in arrest of judgment on the ground that the indictment does not, after amendment, if any, state any indictable offence.

2. The court may in its discretion either hear and determine the matter during the same sittings or reserve the matter for the court of appeal as hereinafter provided.

3. If the court decides in favour of the accused, he shall be discharged from that indictment.

4. If no such motion is made, or if the court decides against the accused upon such motion, the court may sentence the accused during the sittings of the court, or the court may in its discretion discharge him on his own recognizance, or on that of such sureties as the court thinks fit, or both, to appear and receive judgment at some future court or when called upon.

5. If sentence is not passed during the sittings, the judge of any superior court before which the person so convicted afterwards appears or is brought, or if he was convicted before a court of general or quarter sessions, the court of general or quarter sessions at a subsequent sittings may pass sentence upon him or direct him to be discharged. (109)

Sec. 730. Sec. 1008. **Suspension of sentence of death on pregnant woman.** *Meaning unchanged.*

Sec. 731. Sec. 1009. **Jury de ventre inspiciendo abolished.** *Meaning unchanged.*

Sec. 734. Sec. 1010. **Judgment not to be stayed or reversed on certain grounds. Judgment sufficient after verdict, notwithstanding certain objections.** — Judgment, after verdict upon an indictment for any offence against this Act, shall not be stayed or reversed, —

(108) Taken from par. 4 of the old section 733.
(109) Taken from paragraphs 2 and 3 of the old section 733.

(*a*) for want of a *similiter;*
(*b*) by reason that the jury process has been awarded to a wrong officer, upon an insufficient suggestion;
(*c*) for any misnomer or misdescription of the officer returning such process, or of any of the jurors; or,
(*d*) because any person has served upon the jury who was not returned as a juror by the sheriff or other officer.

2. Where the offence charged is an offence created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the statute creating the offence, or prescribing the punishment, although they are disjunctively stated or appear to include more than one offence, or otherwise. *Slightly altered.*

Sec. 735. Sec. **1011. Verdict not to be impeached for certain omissions as to jurors.** *Unchanged.*

Sec. **1012. Appeal from conviction by a judge in a trade conspiracy case.** — An appeal on all issues of law and fact shall lie, from any conviction, by the judge without the intervention of a jury, for any offence mentioned in section 498, to the Court of appeal in the province where such conviction is made; and the evidence taken upon the trial shall form part of the record in appeal, and, for that purpose, the court before which the case is tried shall take note of the evidence and of all legal objections thereto. (110)

Sec. 742. Sec. **1013. Appeal in other cases of indictable offences.** An appeal from the verdict or judgment of any court or judge having jurisdiction in criminal cases, or of a magistrate proceeding under section seven hundred and seventy-seven, on the trial of any person for an indictable offence, shall lie upon the application of such person if convicted, to the

(110) Taken from 52 V., c. 41, s. 5, forming part of the Appendix to the old Code.

court of appeal in the cases hereinafter provided for, and in no others.

2. Whenever the judges of the court of appeal are unanimous in deciding an appeal brought before the said court their decision shall be final.

3. If any of the judges dissent from the opinion of the majority, an appeal shall lie from such decision to the Supreme Court of Canada as hereinafter provided.

Slightly altered.

Sec. 743. Sec. 1014. **No proceeding in error. — Reserve of any question of law for the opinion of the court of appeal.** — No proceeding in error shall be taken in any criminal case.

2. The court before which any accused person is tried may, either during or after the trial, reserve any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the judge, for the opinion of the court of appeal in manner hereinafter provided.

3. Either the prosecutor or the accused may, during the trial, either orally or in writing, apply to the court to reserve any such question as aforesaid, and the court, if it refuses so to reserve it, shall nevertheless take a note of such objection.

4. After a question is reserved, the trial shall proceed as in other cases.

5. If the result is a conviction, the court may in its discretion respite the execution of the sentence or postpone sentence till the question reserved has been decided, and shall in its discretion commit the person convicted to prison or admit him to bail with one or two sufficient sureties, in such sums as the court thinks fit, to surrender at such time as the court directs.

6. If the question is reserved, a case shall be stated for the opinion of the court of appeal. *Slightly altered.*

It has been held by the Supreme Court of the North West Ter-

ritories that, — although the trial judge may, if he sees fit, grant a reserve case, *during* or *after* the trial, either upon application therefor, or of his own motion, — leave to appeal against the trial judge's refusal to reserve a question of law cannot be granted by the court of appeal, except in the case of an application, to reserve the question having been made to the trial court *during* the trial, and refused. (111)

It is a question of fact and not of law, whether the use of a slot machine for selling cigars, — whereby customers obtained for the one price a number of cigars varying according to the working of the machine, — is or is not a game of chance, a mixed game of chance and skill, or a game of skill only. (112)

If the trial judge has no doubt that there was evidence of the offence to go to the jury, he should not reserve a case upon that point. (113)

On an application for a reserved case, the evidence of a juror is not admissible to show that he and another juror had refused to agree with the opinion of the other ten jurors and had failed to object, on the recording of the verdict favored by the ten, because some of the latter had told them that the agreement of ten was sufficient to carry the verdict. (114)

Sec. 744. Sec. **1015. Appeal from refusal to reserve.** — If the court refuses to reserve the question, the party applying may move the court of appeal as hereinafter provided.

2. The Attorney General or party so applying may on notice of motion to be given to the accused or prosecutor, as the case may be, move the Court of Appeal for leave to appeal.

3. The court of appeal may, upon the motion and upon considering such evidence, if any, as it thinks fit to receive, grant or refuse such leave. (115)

Sec. " Sec. **1016. Proceedings on appeal being granted.** — If leave to appeal is granted, a case shall be stated for the opinion of the Court of Ap-

(111) R. v. Toto, 8 Can. Cr. Cas., 410. But there are, at pages 414, 415, of the report, some comments questioning the correctness of the decision.

(112) R. v. Fortier, 7 Can. Cr. Cas., 417.

(113) R. v. Brindamour, 11 Can. Cr. Cas., 315.

(114) R. v. Mullen, 6 Can. Cr. Cas., 363.

(115) These two sections, 1015 and 1016, are formed from the old section 744, without any material alteration.

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peal as if the question had been reserved.

2. If the sentence is alleged to be one which could not by law be passed, either party may without leave, upon giving notice of motion to the other side, move the Court of Appeal to pass a proper sentence.

3. If the Court has arrested judgment, and refused to pass any sentence, the prosecutor may, *without leave,* make such a motion. (115)

Sec. 745. Sec. **1017. Evidence to be sent to the court of appeal.** *Meaning unchanged.*

Sec. 746. Sec. **1018. Powers of Court of Appeal upon hearing.**— Upon the hearing of any appeal under the powers hereinbefore contained, the court of appeal may, —

(*a*) confirm the ruling appealed from; or,

(*b*) if of opinion that the ruling was erroneous, and that there has been a mistrial in consequence, direct a new trial; or,

(*c*) if it considers the sentence erroneous or the arrest of judgment erroneous, pass such sentence as ought to have been passed or set aside any sentence passed by the court below, and remit the case to the court below with a direction to pass the proper sentence; or,

(*d*) if of opinion in a case in which the accused has been convicted that the ruling was erroneous, and that the accused ought to have been acquitted, direct that the accused shall be discharged, which order shall have all the effects of an acquittal, or direct a new trial; or,

(*e*) make such other order as justice requires. (116)

Sec. " Sec. **1019. If no substantial wrong conviction stands.** — No conviction shall be set aside nor any new trial directed, although it appears that some evidence was improperly admitted or

(116) These three new sections, 1018, 1019 and 1020, are taken from the old section 746, without any material alteration.

rejected, or that something not according to law was done at the trial or some misdirection given, *unless, in the opinion of the Court of Appeal, some substantial wrong or miscarriage was thereby occasioned* on the trial: Provided that if the Court of Appeal is of opinion that any challenge for the defence was improperly disallowed, a new trial shall be granted. (116)

Sec. " Sec. 1020. **When some count only affected, sentence as to rest.** — If it appears to the Court of Appeal that such wrong or miscarriage affected some count only of the indictment, the Court may give separate directions as to each count and may pass sentence on any count unaffected by such wrong or miscarriage which stands good, or may remit the case to the court below with directions to pass such sentence as justice may require.

2. The order or direction of the court of appeal shall be certified under the hand of the presiding chief justice or senior puisné judge to the proper officer of the court before which the case was tried, and such order or direction shall be carried into effect. (116)

Leave to appeal will not be granted by an appellate court, on the ground of the admission of irrelevant evidence, if, in the opinion of the court, the reception of such evidence did not occasion any substantial wrong or miscarriage on the trial. (117)

Even if the trial judge should, in his charge, to the jury, direct them erroneously on a certain point, a new trial should not be granted if there was ample evidence of guilt apart from the point in question, and if, in the opinion of the court of appeal no substantial wrong or miscarriage was occasioned by the error. (118)

An unqualified instruction to the jury, on a prosecution for theft against the finder of goods, that the pledging of same by him constitutes theft, is a misdirection entitling the accused to a new trial. (119)

Where comment has been made, in contravention of the *Canada Evidence Act*, upon the failure of the accused to testify, the same

(117) R. v. Callaghan, 8 Can. Cr. Cas., 143.
(118) R. v. Higgins, 36 N. B. R., 18. (Cited, more fully, at p. 57, *ante*).
(119) R.v. Slavin, 7 Can. Cr. Cas., 175.

is a substantial wrong to the accused, and entitles him to a new trial. (120)

The temporary absence of a juror for a few minutes without the permission or knowledge of the court is not such a defect as necessitates a new trial regardless of the question whether any substantial prejudice of the accused has resulted therefrom. Where the only evidence given during such temporary absence was unfavorable to the accused and no possible prejudice has resulted, a reserve case should not be granted nor leave given to appeal. (121)

A person charged with perjury committed in a civil action is entitled to have put in evidence those parts of his testimony in the civil action which may explain or qualify the statements in respect of which the perjury is charged; and the refusal to admit such testimony is a "substantial wrong." (122)

Where a conviction has been made without the legal proof required by law of an essential part of the crime, such defect is a "substantial wrong or miscarriage at the trial," and the conviction must be set aside. (123)

Where an indictment for burglary charges only the breaking and entering with intent, and does not charge a breaking out of the dwelling-house, and the evidence shews that two windows had been disturbed sufficiently to allow of an entrance, one of them being previously closed and the other partly open, but it does not appear by which of them the entrance was made, it is error to instruct the jury that an entrance by either is sufficient, and the misdirection is a substantial wrong to the accused entitling him to a new trial. (124)

Where on an indictment for a principal offence and for an attempt to commit such an offence, the evidence is wholly directed to the proof of the principal offence, the jury's verdict of guilty of the attempt only will not be set aside, although there were no other witnesses in respect of the attempt than those whose testimony, if wholly believed, shewed the commission of the greator offence. It is within the province of the jury, to believe, if it sees fit to do so, a part only of a witness' testimony and to disbelieve the remainder of the same witness' testimony, and it may therefore credit the testimony in respect of a greater offence only in so far as it shews a lesser offence. (125)

An indictment for stealing under a power of attorney which

(120) R. v. King, 9 Can. Cr. Cas., 426.
(121) R. v. McLean, 11 Can. Cr. Cas., 283; 39 N. S. R., 147.
(122) R. v. Coote, 8 Can. Cr. Cas., 199.
(123) R. v. Drummond, 10 Can. Cr. Cas., 340.
(124) R. v. Burns, 7 Can. Cr. Cas., 95; 39 C. L. J., 789.
(125) R. v. Hamilton, 4 Can. Cr. Cas., 251.

charges that the money appropriated was the proceeds of a sale made by the defendant while acting under a power of attorney will not be quashed for failure to allege that the power of attorney was one for the sale or disposition of property (Code, new section 356), but particulars will be ordered as to the date, nature or purport of the alleged power of attorney. The defect, being only a partial one, was cured by verdict, and cannot be given effect to upon a reserved case as to whether a verdict of guilty on such indictment was valid or not. A count in an indictment charging that the defendant acting under a power of attorney fraudulently sold certain bank shares and fraudulently converted the proceeds "and did thereby steal the said proceeds" is not bad as charging two offences, and the reference to the fraudulent sale and fraudulent conversion are to be taken as descriptive of the means whereby the offence of stealing under a power of attorney was committed. (126)

Where all of the evidence went to the jury on a charge of keeping a common gaming house but the trial judge gave an erroneous instruction favourable to the accused as to the meaning of the term "for gain," and the jury acquitted the accused although there was evidence unaffected by such instruction which, if believed, was sufficient for a conviction, an appellate court on a case reserved by the prosecution should decline to order a new trial which would place the accused a second time in jeopardy. (127)

On a plea of insanity raised to a charge of theft a verdict of acquittal upon that ground cannot be disturbed on a reserved case granted to the Crown if there was any evidence, however unsatisfactory, to support the plea. (128)

Where, although the reception of opinion testimony as to the illegality of a transaction is improper, a case is sufficiently made out without such opinion testimony, and the trial is without a jury, the conviction ought to stand. (129)

If upon a case reserved, the appellate court finds that important depositions were improperly received in evidence, and is unable to say that no substantial wrong or miscarriage was occasioned by the irregularity, the conviction should be quashed, but a new trial may be ordered. (130)

Leave to appeal to the Court of Appeal under these sections

(126) R. v. Fulton, 5 Can. Cr. Cas., 36.

(127) R. v. James, 6 Ont. L. R., 35.

(128) R. v. Phinney, (No. 2), 7 Can. Cr. Cas., 280. See R. v. McIntyre, 31 N. S. R., 422.

(129) R. v. Harkness, (No. 2), 9 Can. Cr. Cas., 109. And see R. v. Finnessey, 10 Can. Cr. Cas., 347.

(130) R. v. Brooks, 11 Can. Cr. Cas., 188; 11 Ont. L. R., 325.

should not be granted to a private prosecutor except under exceptional circumstances. (131)

Leave to appeal will not be granted to a private prosecutor from the decision of a police magistrate holding a summary trial by consent merely upon the ground that the magistrate erred in rejecting certain evidence which was properly admissible but corroborative only.

A reserved case upon an objection, taken before pleading, that the charge upon which the accused was arraigned for a speedy trial was not founded upon the evidence adduced at the preliminary enquiry should not be heard by the Court of Appeal until after the trial has been concluded, and then only in case of a conviction. (132)

The improper reception of evidence before a county judge trying a case without jury under the "speedy trials" clauses will not entitle the prisoner to a new trial upon a case reserved, if the county judge certifies therein that, apart from the evidence objected to, there was sufficient evidence to compel him to find the prisoner guilty. (133)

Upon an application for leave to appeal, after refusal of a reserved case, ample notice of the application should be given to the Attorney General, and the notice of motion should set forth the grounds relied upon. (134)

It has been held that an accused person tried and acquitted in a criminal court is entitled to a copy of the record of such acquittal and of the indictment, without the fiat of or intervention by the Attorney-General of the province, and that a *mandamus* will lie to compel the delivery of certified copies. (135)

Sec. 747. Sec. **1021. Leave to a convicted person to apply for a new trial.** *Meaning unchanged.*

Sec. 748. Sec. **1022. New trial by order of Minister of Justice.** *Unchanged.*

Leave to apply, — under the above section, — 1021, — to the Court of Appeal, for a new trial on the ground that the verdict is contrary to the evidence, cannot be granted unless there has been a denial of justice: and this defect cannot be attributed to the verdict by reason of the jury, in rendering it, not considering the evidence of the accused as to facts tending to his acquittal. The jury,

(131) R. v. Burns, (No. 1), 4 Can. Cr. Cas., 323.
(132) R. v. Trepanier, 4 Can. Cr. Cas., 259.
(133) R. v. Tutty, 9 Can. Cr. Cas., 544.
(134) R. v. Lai Ping, 8 Can. Cr. Cas., 467.
(135) R. v. Scully, 5 Can. Cr. Cas., 1; *Aff.* in appeal, *sub. nom.* Atty. Gen. v. Scully, 6 Can. Cr. Cas., 167.

being sole judge of the weight of such evidence, was at liberty to refuse to believe it. (136)

In deciding whether there should be a new trial on the ground that the verdict against the accused was against the weight of evidence, the question is whether or not the verdict is one which the jury as reasonable men ought not to have found. A new trial will not be granted merely because the trial judge is dissatisfied with the verdict and favors an acquittal. (137)

A motion for a new trial can only be made before the court of appeal, upon leave therefor granted by the court before which the trial has taken place. (138)

An application for a new trial on the ground of the discovery of new evidence, instead of being made under section 1021, should be made to the Minister of Justice under section 1022. (139)

It is misdirection, — entitling the accused to a new trial, — for the trial judge to charge the jury that the *onus* is upon the accused to prove, by a preponderance of testimony, an alibi set up in defence. (140) Where the defence is an alibi, and there is evidence tending to support it, the Court, — in view of the universal rule that the burden is upon the prosecution to shew, beyond a reasonable doubt, the commission of the offence by the accused, — should tell the jury that, if they have a reasonable doubt of the presence of the accused at the time when and the place where the offence was committed, they should acquit. (141)

Upon a criminal trial it is the duty of the trial judge, in his charge to the jury, to define the crime charged, and to explain to the jury the difference between it and any other offence for which the jury may convict the accused under the same indictment. Failure to instruct the jury in a trial for murder upon the distinction between murder and manslaughter is a ground for ordering a new trial. A court of criminal appeal should direct a new trial upon a case reserved by the trial judge after the trial in respect of such omission in the judge's charge to the jury, although no objection thereto was taken by the defendant's counsel during the trial. (142)

There is no provision in the Criminal Code authorizing the Court to grant a new trial to the Crown on the ground that the verdict of acquittal is against the weight of evidence. (143)

(136) R. v. Molleur, Que. Jud. Rep., 15 K. B., 1; Can. Ann. Dig., (1906), 91.
(137) R. v. Brewster, 4 Can. Cr. Cas., 34.
(138) R. v. Fouquet, Que. Jud. Rep., 14 K. B., 88.
(139) R. v. Sternaman, 1 Can. Cr. Cas., 1.
(140) R. v. Mysbrall, 8 Can. Cr. Cas., 474; 35 N. B. R., 507.
(141) S. v. Harvey, 13 Cr. Law Mag., 22.
(142) R. v. Wong On, (No. 3), 8 Can. Cr. Cas., 423; 10 B. C. R., 555.
(143) R. v. Phinney, (No. 2), 7 Can. Cr. Cas., 280.

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Sec. 749. Sec. **1023.** **Suspension of sentence in case of appeal.** — The sentence of a court shall not be suspended by reason of any appeal, unless the court expressly so directs, except where the sentence is that the accused suffer death or whipping.

2. The production of a certificate from the officer of the court that a question has been reserved, or that leave has been given to apply for a new trial, or of a certificate from the Minister of Justice that he has directed a new trial, shall be a sufficient warrant to suspend the execution of any sentence of death or whipping.

3. In all cases it shall be in the discretion of the court of appeal in directing a new trial to order the accused to be admitted to bail. *Slightly altered, as here set forth.*

Sec. 750. Sec. **1024.** **Appeal to Supreme Court of Canada.** — Any person convicted of any indictable offence, whose conviction has been affirmed on an appeal taken under section ten hundred and thirteen may appeal to the Supreme Court of Canada against the affirmance of such conviction: Provided that no such appeal can be taken if the court of appeal is unanimous in affirming the conviction, nor unless notice of appeal in writing has been served on the Attorney General within fifteen days after such affirmance or such further time as may be allowed by the Supreme Court of Canada or a judge thereof.

2. The Supreme Court of Canada shall make such rule or order thereon, either in affirmance of the conviction or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect.

3. Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court during which such affirmance takes place, or the session next

thereafter if the said court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court or a judge thereof.

4. The judgment of the Supreme Court shall, in all cases, be final and conclusive.

Altered, as here set forth.

The power given by this section to a judge of the Supreme Court of Canada to extend the time for the service on the Attorney General of notice of appeal in a reserved crown case, may be exercised after the time limited for the service of such notice. (144)

Sec. 751. Sec. **1025. Appeals to Privy Council abolished.**

Meaning unchanged.

PART XX.

PUNISHMENTS, FINES, FORFEITURES, COSTS, AND RESTITUTION OF PROPERTY.

Interpretation.

Sec. 974. Sec. **1026. Definition of Court.** — In the sections of this Part relating to suspended sentence, unless the context otherwise requires, 'Court' means and includes any Superior Court of criminal jurisdiction, any judge or court within the meaning of Part XVIII and any magistrate within the meaning of Part XVI.

Slightly altered, as here set forth.

PUNISHMENT GENERALLY.

Sec. 931. Sec. **1027. Punishment only after conviction.**

Unchanged.

Sec. 932. Sec. **1028. Degrees in punishment.** *Unchanged.*

This section applies as well to proceedings under the Summary Convictions clauses as to proceedings by indictment. Where both fine and imprisonment are provided as the authorized punishment for a statutory offence upon summary conviction, the magistrate may, in his discretion impose either a fine alone or an imprisonment alone, or both, unless the particular statute specially provides otherwise. (1)

Sec. 934. Sec. **1029. Fine or penalty in discretion of court.**

Unchanged.

(144) R. v. Gilbert, 27 Can. L. T., 158.

(1) *Ex p.* Kent, 7 Can. Cr. Cas., 447.

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PUNISHMENTS ABOLISHED.

Sec. 932.	Sec. **1030. Outlawry abolished.**	*Unchanged.*
Sec. 933.	Sec. **1031. Solitary confinement. — Pillory.**	*Unchanged.*
Sec. 934.	Sec. **1032. Deodand.**	*Unchanged.*
Sec. 935.	Sec. **1033. Attainder.**	*Meaning unchanged.*

DISABILITIES.

Sec. 931. Sec. **1034. Conviction of public official,—consequences of, in certain cases.** — If any person hereafter convicted of treason or any indictable offence for which he is sentenced to death, or imprisonment for a term exceeding five years, holds at the time of such conviction any office under the Crown or other public employment, or is entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office or employment shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such person receives a free pardon from His Majesty, within two months after such conviction, or before the filling up of such office or employment, if given at a later period.

2. Every such person sentenced to imprisonment as aforesaid or on whom sentence of death has been passed which has been commuted to imprisonment, shall become, and, until he undergoes the imprisonment aforesaid or suffers such other punishment as by competent authority is substituted for the same, or receives a free pardon from His Majesty, shall continue incapable of holding any office under the Crown, or other public employment, or of being elected, or sitting, or voting, as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise.

3. The setting aside of a conviction by

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	competent authority shall remove the disability by this section imposed.	
	Altered, as here set forth.	
	FINES AND FORFEITURES.	
Sec. 958.	Sec. 1035. **Fines in lieu of other punishment; and fines in addition to other punishment.** — Any person convicted by any magistrate under Part XVI. or by any court of an indictable offence punishable with imprisonment for five years or less may be fined in addition to, or in lieu of any punishment otherwise authorized, in which case the sentence may direct that in default of payment of his fine the person so convicted shall be imprisoned until such fine is paid, or for a period not exceeding five years, to commence at the end of the term of imprisonment awarded by the sentence, or forthwith as the case may require. 2. Any person convicted of an indictable offence punishable with imprisonment for more than five years may be fined, in addition to, but not in lieu of, any punishment otherwise ordered, and in such case, also, the sentence may in like manner direct imprisonment in default of payment of any fine imposed. (2)	
Sec. 927.	Sec. 1036. **Appropriation of fines, penalties and forfeitures; which go to provincial treasurer, except those imposed at instance of Dominion Government, etc.** *Meaning unchanged.*	
Sec. 928.	Sec. 1037. **Governor General in Council may direct payment of any fine, penalty or forfeiture belonging to the Crown to be made to a municipality, etc.** *Unchanged.*	
Sec. 929.	Sec. 1038. **Recovery of penalty or forfeiture to be by civil action when no other provision.** — Whenever any pecuniary penalty or any forfeiture is imposed for any violation of any	

(2) Contains the latter half (slightly altered) of the first paragraph as well as the whole of par. 2 of the old section 958; the first half of the first paragraph of the old section 958 being made into section 1058, *post*.

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Act and no other mode is prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable or enforceable, with costs in the discretion of the Court, by civil action or proceeding at the suit of His Majesty only, or of any private party suing as well for His Majesty as for himself in any form of action allowed in such case by the law of the province in which it is brought, and before any court having jurisdiction to the amount of the penalty in cases of simple contract.

2. If no other provision is made for the appropriation of any penalty or forfeiture so recovered or enforced, one moiety shall belong to His Majesty, and the other moiety shall belong to the private party suing for the same, if any, and if there is none, the whole shall belong to His Majesty.

Slightly altered, as here set forth.

Sec. 930. **Limitation of action for penalty or forfeiture.** *Made into sec.* 1141, *post.*

Sec. **1039.** **Disposal of goods forfeited under Part VII, relating to forgery of trade marks and fraudulent marking of merchandise.** — Any goods or things forfeited under any provision of Part VII. relating to forgery of trade marks and the fraudulent marking of merchandise, may be destroyed or otherwise disposed of in such manner as the court, by which the same are declared forfeited, directs; and the court may, out of any proceeds realized by the disposition of such goods, after all trade marks and trade descriptions are obliterated, award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Added. (2a)

Sec. **1040.** **Costs in such prosecutions.** — On any prosecution under this Act relating to the said last mentioned provisions, the court may order costs to be paid to the defendant by

(2a) These two sections are taken from 51 Vic., c. 41, sections 15 and 16, set out at page 515 of the Author's second edition.

the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively. *Added.* (2*a*)

Sec. **1041.** **Application of fines in relation to coinage offences.** — A moiety of any of the penalties imposed under sections 567, 624, 625 and 626, shall belong to the informer or person who sues for the same, and the other moiety shall belong to His Majesty for the public uses of Canada. (3)

Sec. **1042.** **Application of fines in relation to deserters or their effects.** — One moiety of the amount of any penalty recovered under sections 82, 83, 438, 439 or 657, shall be paid over to the prosecutor or person by whose means the offender has been convicted, and the other moiety shall belong to the Crown. (4)

Sec. **1043.** **Application of fines in relation to cruelty to animals.** — One moiety of every pecuniary penalty recovered with respect to any offence under section 542 or 543 shall be paid over to the Corporation of the city, town, village, township, parish or place in which the offence was committed, and the other moiety with full costs to the person who informed and prosecuted for the same or to such other person as to the justices seems proper. (5)

COSTS, PECUNIARY COMPENSATION AND RESTITUTION OF PROPERTY.

Sec. 832. Sec. **1044.** **Costs and expenses of prosecution may be ordered to be paid by party convicted.** — Any court by which and any judge under Part XVIII or magistrate under Part XVI, by whom judgment is pronounced or record-

(3) Taken from R. S. C., (1886), c. 167, sec. 34, forming part of the Appendix to the old Criminal Code.

(4) Taken from R. S. C., (1886), c. 169, sec. 9, forming part of the Appendix to the old Criminal Code.

(5) Taken from R. S. C., (1886), c. 172, sec. 7, forming part of the Appendix to the old Criminal Code.

ed, upon the conviction of any person for treason or any indictable offence, in addition to such sentence as may otherwise by law be passed, may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, if to such court or judge it seems fit so to do.

2. Such court or judge may include in the amount to be paid such moderate allowance for loss of time as the court or judge, by affidavits or other inquiry and examination, ascertains to be reasonable.

3. The payment of such costs and expenses, or any part thereof, may be ordered by the court or judge to be made out of any moneys taken from such person on his apprehension, if such moneys are his own, or may be enforced at the instance of any person liable to pay or who has paid the same in such and the same manner, subject to the provisions of this Act, as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced.

4. In the meantime, until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this section had not been passed; and any money which is recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses have been paid or defrayed. *Slightly altered, as here set forth.*

Sec. 833. Sec. **1045.** **Defendant recovers costs from prosecutor, if judgment given for defendant in libel case.** *Unchanged.*

Sec. 834. Sec. **1046.** **Imprisonment in default of payment of costs on conviction for assault.** — If a person convicted on an indictment for assault,

whether with or without battery and wounding, is ordered to pay costs as aforesaid, he shall be liable, unless the said costs are sooner paid, to three months' imprisonment, in addition to the term of imprisonment, if any, to which he is sentenced for the offence, and the court may, by warrant in writing, order the amount of such costs to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and the surplus, if any, arising from such sale, to the owner.

2. If such sum is so levied, the offender shall be released from such imprisonment.

Slightly altered.

Sec. 835. Sec. **1047. Taxation of costs.** *Unchanged.*

The taxation of costs against an unsuccessful private prosecutor, who has at his own request been bound over to prefer an indictment, is controlled by this section. (6)

Sec. 836. Sec. **1048. Compensation for loss of property.** *No material alteration.*

Sec. 837. Sec. **1049. Compensation to bona fide purchasers of stolen property.** *Unchanged.*

Sec. 838. Sec. **1050. Restitution of stolen property. Writs of restitution: summary order of restitution, etc.** *Meaning unchanged.*

To entitle the aggrieved party to an order for the restitution to him of money found on the prisoner convicted of stealing money from the person, proof must be adduced identifying the money so found as the money which was stolen. So that where an accused was convicted of stealing bank notes, but there was no evidence to identify them with the bank notes found on and taken from the prisoner when arrested, and no application had been made after conviction for an order of compensation to the prosecutor for his loss, an order may be properly made, *ex parte*, for the restoration to the prisoner of the money so taken from him. (6*a*)

IMPRISONMENT.

Sec. 950. Sec. **1051. Offence not capital, how punished.** *Unchanged.*

Sec. 951. Sec. **1052. Punishment in cases not specially provided for.** *Unchanged.*

(6) R. v. Goulloud, 7 Can. Cr. Cas., 432.
(6*a*) R. v. Haverstock, 5 Can. Cr. Cas., 113.

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Sec. 952.	Sec. 1053. **Punishment for offence committed after a previous conviction.**	*Meaning unchanged.*
Sec. 953.	Sec. 1054. **Maximum term of imprisonment may be shortened.**	*Unchanged.*
Sec. 954.	Sec. 1055. **Cumulative punishments.**	*Unchanged.*
Sec. 955.	Sec. 1056. **Imprisonment for less than two years to be in common gaol.** — Every one who is sentenced to imprisonment for a term less than two years shall, if no other place is expressly mentioned, be sentenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or if there is no common gaol there, then in that common gaol which is nearest to such locality, or in some lawful prison or place of confinement, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed: Provided that, —	

(*a*) when any one is sentenced to imprisonment in a penitentiary, and at the same sittings or term of the court trying him is sentenced for one or more other offences to a term or terms of imprisonment less than two years each, he may be sentenced for such shorter terms to imprisonment in the same penitentiary, such sentences to take effect from the termination of his other sentence; and,

(*b*) when any one is sentenced for any offence who is, at the date of such sentence, serving a term of imprisonment in a penitentiary for another offence, he may be sentenced for a term shorter than two years to imprisonment in the same penitentiary, such sentence to take effect from the termination of his existing sentence or sentences;

(*c*) in the province of Manitoba, any one sentenced to imprisonment for a term less than two years may be sentenced to imprisonment in any one of the

common gaols in that province unless a special prison is provided by law. (7)

Sec. 955. Sec. 1057. **Imprisonment in common gaol to be with or without hard labor.**—Imprisonment in a common gaol, or a public prison, other than a penitentiary or the Central Prison for the province of Ontario, the Andrew Mercer Ontario Reformatory for females or any reformatory prison for females in the province of Quebec, shall be with or without hard labour, in the discretion of the court or person passing sentence, if the offender is convicted on indictment, or under the provisions of Parts XVI, or XVIII., or, in the province of Saskatchewan or Alberta, before a judge of a superior court, or in the Northwest Territories, before a stipendiary magistrate or in the Yukon Territory, before a judge of the Territorial Court.

2. In other cases such imprisonment may be with hard labour, if hard labour is part of the punishment for the offence of which such offender is convicted, and if such imprisonment is to be with hard labour, the sentence shall so direct. (8).

The first paragraph of the old section 955 is omitted from the new Code, and is made into section 42 of the new *Penitentiary Act*, (R. S., 1906, c. 147), as follows:—

Imprisonment in the Penitentiary.—"Every one who is sentenced to imprisonment for life or for a term of years not less than two, shall be sentenced to imprisonment in the penitentiary for the province in which the conviction takes place."

Paragraphs 7 and 8 of the old section 955 are omitted from the new Code, and are made, (as to paragraph 7 and a portion of paragraph 8), into section 43 of the new *Penitentiary Act*, as follows:—

Convict subject to penitentiary regulations.—"Every one who is sentenced to imprisonment in a penitentiary shall be subject to the provisions of the statutes relating to such penitentiary and to all rules and regulations lawfully made with respect thereto;" and

"2. The term of imprisonment in pursuance of any sentence shall, unless otherwise directed in the sentence, commence on and

(7) Taken from paragraphs 2 and 3 of the old section 955.
(8) Taken from par. 6 of the old section 955.

from the day of passing such sentence; but no time during which the convict is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced."

Another portion of par. 8 of the old section 955 is made into the first paragraph of section 12 of the new *Prisons and Reformatories Act*, (R. S., 1906, c. 148), as follows:—

Prison rules.—"Every one who is sentenced to imprisonment in any gaol or other public or reformatory prison, shall be subject to the provisions of the statutes relating to gaol or prison and to all rules and regulations lawfully made with respect thereto."

Paragraph 5 of the old section 955 is omitted from the new Code, and a portion of such par. 5 is made into the first paragraph of section 62 of the new *Penitentiary Act*, as follows:—

Employment of penitentiary convicts. — "Imprisonment in a penitentiary shall be with hard labor, whether so directed in the sentence by which such imprisonment is adjudged or not."

Another portion of paragraph 5 of the old section 955 is made into par. 2 of section 12 of the new *Prisons and Reformatories Act*, as follows:—

Employment of convicts in Central prison, etc.—"Imprisonment in the Central Prison for the province of Ontario, in the Andrew Mercer Ontario Reformatory for females, and in any reformatory prison for females in the province of Quebec, shall be with hard labor, whether so directed in the sentence or not."

Paragraph 4 of the old section 955 is omitted from the new Code, and is made into section 137 of the new *Militia Act*, (R. S., 1906, c. 41), as follows:—

Imprisonment of naval and military offenders in penitentiary or in gaol.—"Any prisoner sentenced for any term by any military or naval authority under this or any Military Act, may be sentenced to imprisonment in a penitentiary"; and

"2. If such prisoner is sentenced to a term less than two years, he may be sentenced to improvisonment in the common gaol of the district, county or place in which the sentence is pronounced, or, if there is no common gaol there, then in that common gaol which is nearest to such locality, or in some other lawful prison or place of confinement other than a penitentiary in which imprisonment may be lawfully executed."

A warrant of commitment of a convict to a penitentiary after a trial under the *Speedy Trials* clauses is sufficient, without further specification of the place of the offence than the marginal reference to the county in which the trial takes place. It is unnecessary, in a sentence of imprisonment to a penitentiary, or in the warrant issued in pursuance thereof, to state a date from which

the imprisonment is to run, as the law expressly provides that the term of imprisonment counts from the date of sentence, unless otherwise ordered. (9).

If the certificate of sentence to imprisonment in a penitentiary is irregular, for omission of the date of sentence, leave may be given, on a *habeas corpus* motion, to return an amended certificate correcting the omission. (10).

Sec. 956. **Imprisonment in Reformatory.** *Omitted.*

This section (956) of the old Code, (as amended and added to by the 2 Ed. VII, c. 13, sec. 4), is transferred to the *Prisons and Reformatories Act,* (R. S., 1906, c. 148), and made into section 29 of that Act, in the following terms:—

Section 29 of the Prisons and Reformatories Act.—"The Court or person before whom any offender whose age at the time of his trial does not, in the opinion of the Court,, exceed sixteen years, is convicted, whether summarily or otherwise, of any offence punishable by imprisonment, may sentence such offender to imprisonment in any reformatory prison in the province in which such conviction takes place, subject to the provisions of any Act respecting imprisonment in such reformatory.

"2. In no case shall the sentence be less that two years' or more than five years' confinement in such reformatory prison.

"3. Such imprisonment shall be substituted in such case for the imprisonment in the penitentiary or other place of confinement by which the offender would otherwise be punishable under any Act or law relating thereto; Provided that in every case where the term of imprisonment is fixed by law to be more than five years, then such imprisonment shall be in the penitentiary.

"4. Every person imprisoned in a reformatory shall be liable to perform such labor as is required of such person.

"5. This section shall apply to the Halifax Industrial School and Saint Patrick's Home at Halifax, although the age of the offender exceeds sixteen years, if it does not exceed eighteen years; and in any case of imprisonment in the said School or Home, the sentence may be for a term of one year or more, but not exceeding five years."

A father having, under the law of the province of Quebec, the care of his minor children, may, with the consent of the management of the school, place his child in a reformatory school authorized for the commitment,—(under section 956 of the old Code, now section 29 of the new *Prisons and Reformatories Act*),—of youthful offenders; and the detention of the child for purposes

(9) R. v. Smitheman, (No. 1), 9 Can. Cr. Cas., 10; *Aff.* in Appeal, R. v. Smitheman, (No. 2). 9 Can. Cr. Cas., 17.

(10) R. v. Wright, 10 Can. Cr. Cas., 461.

of discipline, and subject to release by the father at any time, will not be interfered with by *habeas corpus* on behalf of the child by his mother. (11)

THE TICKET OF LEAVE ACT.

The old *Ticket of Leave Acts* (62-63 Vic., c. 49 and 63-64 Vic., c. 48),—the provisions of which are set out at pages 997-1002 of the Author's second edition of the Criminal Code,—are now repealed, and are replaced by the new *Ticket of Leave Act*, (R. S., 1906, c. 150), which forms part of the Appendix to the present Supplement.

PROVISIONS AS TO SURETIES.

Sec. 958. Sec. **1058. Persons convicted may be fined and bound over to keep the peace.** — Every magistrate under Part XVI and every court of criminal jurisdiction before whom any person is convicted of an offence and is not sentenced to death, shall have power in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behaviour for any term not exceeding two years, and that such person in default shall be imprisoned for not more than one year after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given.

2. Any such recognizance may be in form 49. (12)

Sec. 959. **Recognizance to keep the peace.**

Omitted here. (13)

Sec. 960. Sec. **1059. Proceedings when party remains in prison for two weeks, without finding sureties.** — Whenever any person who has been required to enter into a recognizance with sureties, to keep the peace and be of good behaviour, *or not to engage in any prize fight*, has, on

(11) *Re* A. B., 9 Can. Cr. Cas., 390.

(12) Taken from the first half of par. 1 of the old section 958, the latter half and par. 2 thereof being made into section 1035, *ante*.

(13) And made into section 748, *ante*.

account of his default therein, remained imprisoned for two weeks, the sheriff, gaoler or warden shall give notice, in writing, of the facts, to a judge of a superior court or to a judge of the county court of the county or district in which such gaol or prison is situate, or, in the cities of Montreal and Quebec to a judge of the sessions of the peace for the district, or, in the North West Territories, to a stipendiary magistrate.

2. Such judge or magistrate may order the discharge of such person, thereupon or at a subsequent time, upon notice to the complainant or otherwise, or may make such other order as he sees fit, respecting the number of sureties, the sum in which they are to be bound and the length of time for which such person may be bound.

Slightly altered, as here set forth.

WHIPPING.

Sec. 957. Sec. 1060. **Sentence of punishment by whipping.** *Unchanged.*

CAPITAL PUNISHMENT.

Sec. 935. Sec. 1061. **Punishment the same on conviction by verdict or by confession.** *Unchanged.*

Sec. 936. Sec. 1062. **Form of sentence of death.** *Unchanged.*

Sec. 937. Sec. 1063. **Sentence of death to be reported to the Secretary of State.** *Meaning unchanged.*

Sec. 938. Sec. 1064. **Prisoner under sentence of death to be confined apart.** *Unchanged.*

Sec. 939. Sec. 1065. **Place of execution.** *Unchanged.*

Sec. 940. Sec. 1066. **Persons who shall be present at execution.** *Unchanged.*

Sec. 941. Sec. 1067. **Persons who may also be present at execution.** *Unchanged.*

Sec. 942. Sec. 1068. **Certificate of death by surgeon, and declaration by sheriff and gaoler.** *Meaning unchanged* (14).

Sec. 943. Sec. 1069. **Deputies may act.** *Unchanged.*

Sec. 944. Sec. 1070. **Inquest.** *Meaning unchanged.*

(14) The form of surgeon's certificate of death is now Form 71; and the form of declaration of the sheriff and gaoler is now Form 72.

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Sec. 945.	Sec. **1071. Place of burial.**	*Unchanged.*
Sec. 946.	Sec. **1072. Certificate, etc., to be sent to Secretary of State and printed copies to be exhibited at prison,**	*Meaning unchanged.*
Sec. 947.	Sec. **1073. Omissions not to invalidate execution.**	*Unchanged.*
Sec. 948.	Sec. **1074. Procedure in other respects.**	*Unchanged.*
Sec. 949.	Sec. **1075. Rules and Regulations as to execution,**	*Unchanged.*

Fines imposed under the Montreal City Charter belong to the Crown as represented by the government of the province of Quebec, and not to the City of Montreal, and the city has no power to remit the same. (15).

PARDON.

Sec. 966.	Sec. **1076. Pardon by the Crown.**	*Meaning unchanged.*
Sec. 967.	Sec. **1077. Commutation of sentence.**	*Meaning unchanged.*
Sec. 968.	Sec. **1078. Undergoing sentence equivalent to a pardon.**	*Meaning unchanged.*
Sec. 969.	Sec. **1079. Satisfying judgment; and release from all further proceedings.**	*Unchanged.*
Sec. 970.	Sec. **1080. Royal prerogative of mercy not limited.**	*Unchanged.*

SUSPENDED SENTENCE.

Sec. 971.	Sec. **1081. Conditional release of first offender; and suspension of sentence when punishment of offence not more than two years imprisonment.**	*Unchanged*

If no previous conviction is proved against the accused upon a summary trial for an indictable offence, and the magistrate's power to award imprisonment is limited to a term of less than two years, such magistrate may, upon conviction, release the accused upon suspended sentence; and where the person convicted upon a summary trial, is released upon suspended sentence and is directed to pay the informant's costs, such costs are payable forthwith, unless otherwise ordered. (16).

The proper time for taking evidence of a previous conviction to exclude a magistrate's jurisdiction to release on suspended sentence is after the finding of guilty on the present charge, and not during the hearing of the charge. If the Crown does not adduce evidence

(15) *Ex p.* John Armitage, 5 Can. Cr. Cas., 345.
(16) R. v. McLellan, (No. 1), 10 Can. Cr. Cas., 1.

of a previous conviction, the magistrate may, on his own initiative, call for the records under his own control and custody and hold an enquiry upon the question whether the defendant had been previously convicted before him, as well as on the questions of identity, age and antecedents of the defendant, for the purpose of considering the appropriate punishment or a release on suspended sentence, where the latter is permissable. (17).

Where a convicted person, instead of being sentenced, is discharged from custody upon entering into a recognizance with sureties to appear and receive judgment when called on, it is only on motion of the Crown that the recognizance can be estreated or judgment moved against him. In Ontario, it has been held that a private prosecutor, in a prosecution for defamatory libel, has no *locus standi* to make the application. (18)

Sec. 972. Sec. 1082. **Conditions of release.** *Unchanged.*

Sec. 973. Sec. 1083. **Warrant when recognizance not observed.** *Unchanged.*

REMITTING PENALTIES.

Sec. **1084. Governor in Council may remit fines, etc.**— The Governor in Council may at any time remit, in whole or in part, any pecuniary penalty, fine or forfeiture imposed by any Act of the Parliament of Canada, whether such penalty, fine or forfeiture is payable to His Majesty or to some other person, or in part to His Majesty and in part to some other person, and whether it is recoverable on indictment, information or summary conviction or by action or otherwise. *Added.*

Sec. **1085. Costs.** — Such remission may, in the discretion of the Governor in Council, be on terms as to the payment of costs or otherwise: Provided that where proceedings have been instituted by private persons costs already incurred shall not be remitted. *Added.*

(17) R. v. Bonnevie, 10 Can. Cr. Cas., 376.
(18) R. v. Young, 4 Can. Cr. Cas., 580.

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PART XXI.

RENDER BY SURETIES AND RECOGNIZANCES.

Interpretation.

Sec. 926. Sec. **1086. Definition of 'cognizor.'** — In the sections of this Part relating exclusively to the province of Quebec, unless the context otherwise requires, 'cognizor' includes any number of cognizors in the recognizance whether as principals or sureties. (19)

DIVISION OF PART.

Sec. 926. Sec. **1087. Certain sections apply only to Quebec, and others not to Quebec.** — Sections 1088 to 1101 inclusive are general in their application. Sections 1102 to 1112 inclusive do not apply to the province of Quebec. Sections 1113 to 1119 inclusive apply to the province of Quebec only. (20)

GENERAL.

Sec. 910. Sec. **1088. Render of accused by surety.** *Unchanged.*
Sec. 911. Sec. **1089. Bail after Render.** *Meaning unchanged.*
Sec. 912. Sec. **1090. Discharge of Recognizance.** *Unchanged.*
Sec. 913. Sec. **1091. Render of accused in court by sureties.** *Unchanged.*
Sec. 914. Sec. **1092. Sureties not discharged by arraignment or conviction.** *Meaning unchanged.*
Sec. 915. Sec. **1093. Right of surety to render not affected,** *Unchanged.*
Sec. 917. Sec. **1094. Officer to prepare list of persons under recognizance making default.** *Meaning unchanged.*
Sec. 918. Sec. **1095. Proceedings on forfeited recognizance not to be taken except by order of judge, etc.** *Meaning unchanged.*
Sec. 893. Sec. **1096. Proceedings for enforcing recognizance on certiorari.**—The like proceedings may be

(19) Taken from par. 4 of the old section 926.
(20) Taken from par. 1 of the old sec. 926.

had for enforcing the condition of a recognizance taken under section eleven hundred and twenty-six as might be had for enforcing the condition of a recognizance taken under the Act to Parliament of the United Kingdom, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen. *Altered, as here set forth.*

Sec. 805. Sec. 878. Sec. 900. Sec. **1097. Justice's certificate of default of person under recognizance.**—Whenever a person gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, or whenever the conditions or any of them in any recognizance entered into by an applicant to whom a case stated by a justice under this Act has been delivered, have not been complied with, the justice who took the recognizance, or any justice who is then present, having certified upon the back of the recognizance the non-appearance of the person or the non-compliance with the condition, as the case may be, may transmit such recognizance to the proper officer in the province appointed by law to receive the same, to be proceeded upon in like manner as other recognizances.

2. Such certificate shall be *prima facie* evidence of such non-appearance or non-compliance.

3. Such certificate shall be in form 73. (21).

Sec. 878. Sec. **1098. Recognizance and certificate of default are to be transmitted, in Ontario, to the clerk of the peace; and the court of general sessions estreats the recognizance.** — The proper officer to whom the recognizance and certificate of default are to be transmitted in the province of Ontario, shall be the clerk of the peace of the county for which such justice is acting.

(21) This new section, 1097, is formed from the old sections 805 and 878 and from paragraph 13 of the old section 900.

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	2. The Court of general sessions of the peace for such county shall at its then next sitting, order all such recognizances to be forfeited and estreated and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines forfeitures or amercements imposed by or forfeited before such court.(22)	
Sec. "	Sec. **1099. Proper officer in British Columbia and in other provinces to whom recognizances are to be transmitted.** — In the province of British Columbia, such proper officer shall be the clerk of the County Court having jurisdiction at the place where such recognizance is taken, and such recognizance shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such County Court. 2. In the other provinces of Canada such proper officer shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law heretofore in force; and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected. (22)	
Sec. 598. Sec. 900.	Sec. **1100. Manner of estreat.** — All recognizances taken or entered into under any provisions of this Act which are forfeited or in respect to which the conditions of such recognizances or any of them have not been complied with shall be liable to be estreated in the same manner as any forfeited recognizance to appear is by law liable to be estreated by the court before which the principal party thereto was bound to appear. (23)	

(22) The new sections, 1098 and 1099, are formed from par. 3 of the old section 878.

(23) Taken from par. 5 of the old sec. 598 and from par. 13 of the old section 900.

Sec. 925. Sec. **1101. Proceeds to be paid to Minister of Finance.** — The sheriff or other officer shall, without delay, pay over all moneys collected under the provisions of this Part by him, to the Minister of Finance, or other authority or person entitled to receive the same.

Slightly altered, as here set forth.

PROVISIONS NOT APPLICABLE TO THE PROVINCE OF QUEBEC.

Sec. 916. Sec. **1102. Entry of Fines, etc., on record and recovery thereof.** — Unless otherwise provided, all fines, issues, amercements and forfeited recognizances, the disposal of which is within the legislative authority of the Parliament of Canada, set, imposed, lost or forfeited before any Court of criminal jurisdiction shall, within twenty-one days after the adjournment of such Court be fairly entered and extracted on a roll by the Clerk of the Court, or in case of his death or absence, by any other person, under the direction of the Judge who presided at such Court, which roll shall be made in duplicate and signed by the Clerk of the Court, or in case of his death or absence, by such Judge. (24)

Sec. " Sec. **1103. Affidavit.** — The Clerk of the Court shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say:

"I, A. B. (*describing his office*), make "oath that this roll is truly and carefully "made up and examined, and that all fines, "issues, amercements, recognizances and "forfeitures which were set, lost, imposed "or forfeited, at or by the Court therein "mentioned, and which, in right and due "course of law, ought to be levied and paid, "are, to the best of my knowledge and un- "derstanding, inserted in the said roll; and "that in the said roll are also contained and "expressed all such fines as have been paid "to or received by me either in Court or

(24) The new sections, 1102-1106, are formed from the old section 916.

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"otherwise, without any wilful discharge, "omission, misnomer or defect whatsoever. "So help me God."

2. Any Justice for the county is hereby authorized to administer such oath. (24)

Sec. 916. Sec. **1104. Rolls to be filed in certain courts.** — If such Court is a Superior Court having criminal jurisdiction one of such rolls shall be filed with the Clerk, Prothonotary, Registrar or other proper Officer: —

(*a*) in the province of Ontario, of the High Court of Justice;

(*b*) in the provinces of Nova Scotia, New Brunswick and British Columbia, of the Supreme Court of the province;

(*c*) in the province of Prince Edward Island, of the Supreme Court of Judicature of that province;

(*d*) in the province of Manitoba, of the Court of Queen's Bench of that province;

(*e*) in the province of Saskatchewan or Alberta, of the Supreme Court of the North West Territories pending the abolition of that court by the legislature of the province, and thereafter, of such court in either of the said provinces as may in respect of that province be substituted by the legislature thereof for the Supreme Court of the North West Territories; and,

(*f*) in the Yukon Territory, of the Territorial Court;

on or before the first day of the term next succeeding the Court by or before which such fines or forfeitures were imposed or forfeited. (24)

Sec. **1105. Filing of the rolls in the Court of General Sessions.** — If such Court is a Court of General Sessions of the Peace, or a County Court, one of such rolls shall remain deposited in the office of the clerk of such Court.

(24) The new sections, 1102-1106, are formed from the old section 916.

2. The other of such rolls aforesaid shall, as soon as the same is prepared, be sent by the Clerk of the Court making the same, or in case of his death or absence, by such Judge as aforesaid, with a writ of *fieri facias and capias*, according to form 74, to the Sheriff of the county in and for which such Court was holden. (24)

Sec. 1106. **Levy under writ, etc.** — Such writ shall be authority to the Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amercements and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made.

2. Every person so taken shall be lodged in the common gaol of the county, until satisfaction is made or until the Court into which such writ is returnable, upon cause shown by the party, as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with. (24)

Sec. 920. Sec. 1107. **Sale of lands by Sheriff.** *Unchanged.*

Sec. 919. Sec. 1108. **Recognizance need not be estreated in certain cases.** *Meaning unchanged.*

Sec. 921. Sec. 1109. **Discharge from custody on giving security.** *Unchanged.*

Sec. 922. Sec. 1110. **Discharge of forfeited recognizance.** *Unchanged.*

Sec. 923. Sec. 1111. **Return of writ by Sheriff.** *Unchanged.*

Sec. 924. Sec. 1112. **Roll and return to be transmitted to Minister of Finance.**—A copy of such roll and return, certified by the clerk of the court into which such return is made, shall be forthwith transmitted to the Minister of Finance, with a minute thereon of any of the sums therein mentioned, which have

(24) The new sections 1102-1106 are formed from the old sec. 916.

been remitted by order of the court, in whole or in part, or directed to be forborne, under the authority of section eleven hundred and eight.

Slightly altered, as here set forth.

PROVISIONS APPLICABLE ONLY TO THE PROVINCE OF QUEBEC.

Sec. 926. Sec. **1113. Estreat on default.**—Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case, proceeding or matter, in the province of Quebec, within the legislative authority of the Parliament of Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it then is, or, where the recognizance has been entered into orally in open court, a certificate or minute of such recognizance, under the seal of the court, shall be made from the records of such court. (25).

Sec. " Sec. **1114. Transmission of recognizance, etc., to Superior Court.**—Such recognizance, certificate or minute, as the case may be, shall be transmitted by the court, recorder, justice, magistrate or other functionary before whom the cognizor, or the principal cognizor, where there is a surety or sureties, was bound to appear, or to do that by his default to do which the condition of the recognizance is broken, to the Superior Court in the district in which the place where such default was made is included for civil purposes, with the certificate of the court, recorder, justice, magistrate or other functionary as aforesaid, of the breach of the condition of such recognizance, of which, and of the forfeiture to the Crown of the penal sum therein mentioned, such certificate shall be conclusive evidence. (26).

(25) Taken from the first paragraph of subsection 2 of the old section 926.

(26) Taken from clause (*a*) of subsection 2 of the old section 926.

Sec. " Sec. **1115. Judgment to be entered.**—The date of the receipt of such recognizance or minute and certificate by the prothonotary of the said court, shall be endorsed thereon by him, and he shall enter judgment in favour of the Crown against the cognizor for the penal sum mentioned in such recognizance, and execution may issue therefor after the same delay as in other cases, which shall be reckoned from the time the judgment is entered by the prothonotary of the said court. (27).

Sec. " Sec. **1116. Execution on fiat of Attorney-General.**—Such execution shall issue upon fiat or *praecipe* of the Attorney-General, or of any person thereunto authorized in writing by him; and the Crown shall be entitled to the costs of execution and to costs on all proceedings in the case subsequent to execution, and to such costs, in the discretion of the court, for the entry of the judgment, as are fixed by any tariff.

2. The cognizor shall be liable to coercive imprisonment for the payment of the judgment and costs. (28).

Sec. " Sec. **1117. Proceedings when goods or lands insufficient to satisfy judgment.**—When sufficient goods and chattels, lands or tenements cannot be found to satisfy the judgment against a cognizor and the same is certifieed in the return to the writ of execution or appears by the report of distribution, a warrant of commitment addressed to the sheriff of the district may issue upon the fiat or praecipe of the Attorney-General, or of any person thereunto authorized in writing by him, and such warrant shall be authority to the sheriff to take into custody the body of the cognizor so in default and to lodge him in the common jail of the district until satisfaction is made, or until the court which issued such warrant, upon cause shown as hereinafter menfioned, makes an

(27) Taken from clause (*b*) of subsec. 2 of the old sec. 926.
(28) Taken from clauses (*c*) and (*d*) of subsec. 2 of the old sec. 926.

order in the case and such order has been fully complied with.

2. Such warrant shall be returned by the sheriff on the day on which it is made returnable and the sheriff shall state in his return what has been done in execution thereof.

3. On petition of the cognizor, of which notice shall be given to the clerk of the Crown of the district, the court may inquire into the circumstances of the case and may in its discretion order the discharge of the amount for which he is liable or make such order with respect thereto and to his imprisonment as may appear just, and such order shall be carried out by the sheriff. (29).

Sec. " Sec. **1118. Process of recognizance.**—When a person has been arrested in any district for an offence committed within the limits of Quebec, and a justice has taken recognizances from the witnesses heard before him or another justice for their appearance at the next session or term of the court of competent criminal jurisdiction, before which such person is to undergo his trial there to testify and give evidence on such trial and such recognizances have been transmitted to the office of the clerk of such court, the said court may proceed on the said recognizances in the same manner as if they had been taken in the district in which such court is held. (30).

Sec. " Sec. **1119. Recovery by action.**—Whenever any sum forfeited by the non-performance of the conditions of a recognizance cannot for any reason be recovered in the manner provided in the last four preceding sections, the same shall be recoverable, with costs, by action in any court having jurisdiction in civil cases to the amount, at the suit of the Attorney-General of Canada or of Quebec, or other person or officer author-

(29) Taken from clauses (*e*), (*f*), (*g*), of subsec. 2 of the old sec. 926.
(30) Taken from subsec. 5 of the old section 926.

ized to sue for the Crown; and in any such action it shall be held that the person suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is, therefore, due to the Crown, unless the defendant proves the contrary.

2. The cognizor for the recovery of the judgment in any such action shall be liable to coercive imprisonment in the same manner as a surety is in the case of judicial suretyship in civil matters. (31).

PART XXII.

EXTRAORDINARY REMEDIES.

Secs. 752. Sec. 1120. **Further detention of person accused on enquiry as to legality of his imprisonment.**— Whenever any person in custody charged with an indictable offence has taken proceedings before a judge or criminal court having jurisdiction in the premises by way of *certiorari, habeas corpus* or otherwise, to have the legality of his imprisonment inquired into, such judge or court may, with or without determining the question, make an order for the further detention of the person accused, and direct the judge or justice, under whose warrant he is in custody, to take any proceedings, hear such evidence, or do such further act as in the opinion of the Court or judge may best further the ends of justice.

Under this provision, the accused, who has taken proceedings to have the legality of his imprisonment enquired into, may be sent back to the court, judge or justice, under whose order he is held, for further evidence to be taken, or to be dealt with by a fresh warrant of commitment; (32) and, — although, in speaking of the person in custody, the section uses the expression, "the person in custody *charged*," it has been said that a person *convicted* of an

(31) Taken from subsec. 3 of the old section 926.
(32) Senger's Magistrates Manual, p. 47.

indictable offence still remains a person *charged* with an indictable offence, — (33) it may be that, as the proceedings to which the section refers are not only to proceedings by way of *habeas corpus* but also proceedings by way of *certiorari*, the powers which are conferred are to apply as well *after* as *before* conviction.

Where, however, a writ of *habeas corpus* was issued and an order was made suspending a part of the sentence (the penalty of whipping), and, on its return, the judge quashed the writ of *habeas corpus* on the ground that the petitioner was in custody under a sentence legally pronounced by a competent tribunal, it was held by such judge that, being unable to find a single case in which the above section had been interpreted as being capable of application after condemnation, he was unable to do more than order the quashing of the writ of *habeas corpus* and of the order of suspension, and had no power to direct the tribunal to execute the part of the sentence which had been suspended. (34)

Where the conviction itself was lodged with the gaoler as his authority for the detention, in lieu of a warrant of commitment, the judge, before whom the prisoner is brought upon *habeas corpus*, may properly order the further detention of the prisoner for a limited time until a warrant in due form can be obtained from the magistrate. (35)

Where the evidence as to the commission of the alleged offence is conflicting, and the term of imprisonment imposed by the conviction is in excess of that authorized by law, the judge before whom the case is brought on *habeas corpus* should not exercise the powers conferred by above section, — 1120, — of making an order for the further detention of the accused. (36)

Where a justice, — having no summary jurisdiction over the offence charged other than to hold a preliminary enquiry and commit for trial, — has himself tried and convicted the accused, no order should be made, in *habeas corpus* proceedings, for the further detention of the accused and his return to the justice's court for a preliminary enquiry. (37)

See further, as to *certiorari*, pp. 332-338, *post*.

And see further, as to *habeas corpus*, pp. 342-349, *post*.

Sec. 886. Sec. **1121. Conviction affirmed on appeal not to be quashed for want of form, nor removed by certiorari.** — No conviction or order *made*

(33) Tremeear on the Criminal Code, p. 659.

(34) R. v. Goldsberry, 11 Can. Cr. Cas., 159.

(35) R. v. Morgan, 5 Can. Cr. Cas., 63. And see R. v. Morgan, (No. 2), 5 Can. Cr. Cas., 272.

(36) R. v. Randolph, 4 Can. Cr. Cas., 165.

(37) R. v. Blucher, 7 Can. Cr. Cas., 278.

on summary conviction which has been affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any Superior Court, and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same. *Altered, as here set forth.*

Sec. 887. Sec. **1122. Certiorari not to lie when appeal is taken.** *Unchanged.*

CERTIORARI.

The writ of *certiorari*, — which is a writ issuing out of a Superior Court for the purpose of bringing up before it the proceedings of such inferior courts and officers as exercise judicial functions,— does not lie to such as exercise merely ministerial functions, nor to bodies exercising legislative functions, such as town councils passing resolutions which are illegal or beyond their powers. (38)

Express words taking away the right of *certiorari* are inapplicable not only to cases where the convicting justice has not jurisdiction over the subject matter of the conviction, or where he exceeds his jurisdiction, or where the tribunal has been illegally constituted or the conviction has been obtained by fraud; (39) but they are also inapplicable where there has been improper conduct on the part of the magistrate, or the fundamental principle, entitling a party to a fair trial, has been overlooked, and, in such a case, a *certiorari* will be granted. (40)

In such exceptional cases, as where a gross perversion of justice has occurred through the misconduct of the magistrate, the court will grant a *certiorari*, although another mode of reviewing the conviction is provided by statute, and although there is a provision that no *conviction* shall lie when an appeal is taken. Thus, where an appeal was taken from a summary conviction, but lapsed, because of the failure of the magistrate to return the conviction, a superior court afterwards issued a *certiorari* and quashed the convic-

(38) R. v. Waterman's Company, [1897], 1 Q. B., 659; R. v. Sharman, [1898], 1 Q. B., 578; R. v. Bowman, [1898], 1 Q. B., 663; R. v. Gotham, [1898], 1 Q. B., 802; R. v. Manchester, J. J., [1899], 1 Q. B., 571; *In re* New Glasgow, (Town Council), 1 Can. Cr. Cas., 22.

(39) R. v. St. Pierre, 5 Can. Cr. Cas., 305; R. v. Horning, 8 Can. Cr. Cas., 268. And see cases cited at page 941 of the Author's second edition.

(40) *Re* Sing Kee, 5 Can. Cr. Cas., 86.

tion, — notwithstanding the abortive appeal, and notwithstanding the provision contained in the above section, 1122, — upon the grounds that the magistrate had deprived the accused of a reasonable opportunity of making their defence and had acted collusively with the prosecutor, and that the defendants had been thwarted in the prosecution of their appeal, without any fault on their part.(41)

The making up of costs is a ministerial act, and does not go to the jurisdiction, so that, where the magistrate, on a summary conviction, allows excessive costs in respect of mileage to the constable for serving subpœnas upon witnesses, it is not a ground for quashing the conviction. (42)

An improper reception of evidence, not allowing full cross-examination of a witness for the prosecution, and the improper refusal of an adjournment do not go to the jurisdiction. (43)

But it has been held that a refusal to allow a defendant to give evidence is a matter going to the jurisdiction. (44).

By section 5 of the Imperial Act, 13 Geo. II, c. 18,—which has been held to be in force in Ontario, (45), and in British Columbia, (46), and which, no doubt, is in force, also, in other provinces, though not, as it seems, in New Brunswick, (47), nor in Nova Scotia, (48), it is provided that no writ of *certiorari* shall be granted to remove any conviction, judgment, order or other proceedings had or made by or before any justice or justices of the peace of any county, city, town-corporate, etc., or the respective general or quarter sessions thereof, unless applied for within *six calendar* months next after such conviction, etc., and unless it be duly proved upon oath that the party suing for the same has given *six days'* written notice thereof to such justice or justices, so that he or they or the parties therein concerned may show cause against the issuing or granting of such *certiorari*.

It has, however, been held, in England, that the 13 Geo. II, c. 18, sec. 5, while in force, there, (it having been some time ago repealed), applied only to convictions, etc., of *justices of the peace*, and that where an application for a *certiorari* was not made under that Act, the party applying was not limited to six months,

(41) *Ex p.* Cowan *et al.*, 9 Can. Cr. Cas., 454. And see R. v. Alford, 10 Can. Cr. Cas., 61.
(42) R. v. Rayworth, 2 Can. Cr. Cas., 230.
(43) R. v. McDonald, 26 N. S. R., 94.
(44) *Ex p.* Legere, 27 N. B. R., 292.
(45) R. v. Peterman, 23 U. C., Q. B., 516; R. v. Munro, 24 U. C., Q. B., 44.
(46) *Re* Plunkett, 1 Can. Cr. Cas., 365.
(47) *Ex p.* Kyle, 32 N. B. R., 212.
(48) R. v. Porter, 20 N. S. R., 352.

but might apply at any more lengthened period as the Court, under the circumstances, might think reasonable. (49).

It has been held that the giving of the six days' notice (now provided for, in England, by No. 39 of the Crown Office Rules, 1886), is a condition precedent to an application for a *certiorari*, that the court has no jurisdiction to grant it, unless the notice has been given and that the service of a rule *nisi* for a *certiorari*,—though made returnable six days or more after service thereof,—is not a good substitute for the notice of application, and, therefore, not a sufficient compliance with the statute. (50).

It has also been held, however, that the objection of want of the six days' notice may be waived. (51)

For Form of Notice of Application for *certiorari*, see p. 340, *post*.

An application for a *certiorari* must be supported by an affidavit showing the grounds upon which it is sought; (52) and a copy of the proceedings sought to be removed should be produced with the application and be verified by affidavit, or, if a copy of the proceedings cannot be obtained, it should be shown what the proceedings were, and what efforts have been made to procure a copy of them and why a copy cannot be obtained.

Where, in a New Brunswick case, a copy of the proceedings was not attached to and exhibited with the affidavits upon which the rule *nisi* for *certiorari* was obtained, and where it was not shown what the proceedings were, nor that a copy of the proceedings sought to be removed could not be obtained, the court discharged the rule. (53).

For Forms of Motion for *certiorari* and of Affidavits in support thereof, see pp. 340-341, *post*.

The rule for the issuing of the *certiorari* must specify the omission or mistake or other defect objected to in the conviction, order or judgment sought to be removed. (54).

The question of the validity of the conviction or commitment is sometimes argued on the application for *certiorari*; and, if the proceedings are then decided to be valid, a *certiorari* will be refused. (55).

For Form of Order for *certiorari*, see p. 341, *post*.

A writ of *certiorari* is properly addressed to the officer having

(49) R. v. Sheffield Corporation, 40 L. J. Q. B., 247.

(50) R. v. McAllen, 45 U. C., Q. B., 402, 406; R. v. Glamorgan, J. J., 2 T. R., 279; *Re* Plunkett, *supra*; *Ex p.* Roberts, 50 J. P., 567.

(51) R. v. Whittaker, 24 O. R., 437.

(52) R. v. Olace, 4 Burr., 2458.

(53) *Ex p.* Emmerson, 1 Can. Cr. Cas., 156.

(54) R. v. Beale, 1 Can. Cr. Cas., 235.

(55) *See* R. v. Connerty, 2 Can. Cr. Cas., 325.

the custody of the papers sought to be removed, and, therefore, if the conviction has been returned to the clerk of the peace, under section 757 of the Code, the writ of *certiorari* need only be addressed to the latter. (56).

For Forms of Writ of *certiorari*, of recognizance upon application therefor, and of Return to *certiorari*, see pp. 976-998 of the Author's second edition.

Where proceedings pending before an inferior court are,—after a finding against the accused, but before the date to which the case was adjourned for sentence,—removed by *certiorari* into a superior court, a warrant of commitment issued by the inferior court, in enforcement of the judgment and sentence pronounced by it, on the latter date, is invalid. (57).

Preliminary objections to a writ of *certiorari* must be raised promptly and objections to matters of form in the *certiorari* proceedings,—such as that the magistrate had not had six full days' notice of the application for the writ,—will not be entertained on the motion to quash the conviction, when, since the return, three months have elapsed, without a substantive motion being made to quash the writ; this delay being held to be a waiver of the right to take the objection. (58).

The objection of want of notice or other objection to the proceedings may be raised by a substantive motion to supersede the writ of *certiorari;* but that course is not always essential, and the objection may be one that can be raised on the return of the motion to quash the conviction; although defects of form or of a trifling nature will not be allowed to be brought up on the motion to quash the conviction; and a substantive motion will be necessary so as to give an opportunity for ordering an amendment if proper; but if the defect forming the ground of objection to the writ of *certiorari* is a fundamental one, it is not too late to bring it up on the motion to quash the conviction. (59).

The same rule applies to an objection to the *certiorari* proceedings on the ground that the required security is defective or has not been properly given. (60).

It has been held in Ontario, that, if a motion to quash an irregular recognizance in a *certiorari* proceeding is not brought on until the return of the motion to quash the conviction, the court

(56) R. v. Frawley, 45 U. C., Q. B., 227-231.
(57) R. v. Foster, 7 Can. Cr. Cas., 46.
(58) R. v. Davidson, 6 Can. Cr. Cas., 117; R. v. Whittaker, 24 O. R., 437.
(59) R. v. McAllen, *supra*.
(60) R. v. Cluff, 44 U. C., Q. B., 565. And, see, *In re* Bishop Dyke, 20 N. S. R., 263, and R. v. Porter, *Ib.*, 352.

may concurrently quash both the conviction and the recognizance, if both are found to defective. (61).

In order to avoid a waiver of an objection,—for instance, of want of notice, — the justice or the prosecutor should either make a substantive motion to supersede the *certiorari*, or cause notice to be served that he will take the objection on the return of the motion to quash the conviction.

Should he not do this, he may, by acquiescence in the motion to quash, or by delay, or by allowing an adjournment to be ordered, without raising the objection, be held to have waived it. (62).

Under the provisions of the Crown rules, Nova Scotia, 1889, a motion to rescind an order for *certiorari* must be made by way of appeal. (63).

A second application for a writ of *certiorari* will not be entertained by the court, although the dismissal of the first application was upon a preliminary objection. (64).

Where, in the course of *certiorari* proceedings, an order *nisi* to quash the conviction has been issued, but, before service of the same upon the informant prosecutor, the latter dies, the proceedings do not lapse and can be continued by serving the magistrates. (65).

It has been held in the North-West Territories that costs of quashing a conviction by *certiorari* proceedings will not be awarded, except in cases of misconduct on the part of the informant or of the justice. (66)

In the Province of British Columbia, costs are allowed, — it being held there that the practice in *certiorari* proceedings of never awarding costs either in favor of or against the Crown is to be considered as no longer in force in that province. (67)

But, in the Province of Ontario, it has been held that, in *certiorari* proceedings respecting a criminal charge under Dominion laws, the High Court has no jurisdiction to award costs against the prosecutor or the magistrate on quashing the conviction; although, as against an unsuccessful applicant for the writ, costs may be allowed either on account of the recognizance which he enters into to pay the costs, or of the inherent power of the court to give costs as a punishment for erroneously putting the jurisdiction of the Court in motion. (68)

(61) R. v. Johnson, 8 Can. Cr. Cas., 123.
(62) R. v. Whittaker, *supra*.
(63) R. v. Fraser, 22 N. S. R., 502.
(64) R. v. Geiser, (No. 2), 7 Can. Cr. Cas., 172. *See* R. v. Bodmin, (Mayor of), [1892], 2 Q. B., 21, and R. v. Nichols, 21 N. S. R., 288.
(65) R. v. Fitzgerald, 1 Can. Cr. Cas., 420.
(66) R. v. Banks, 1 Can. Cr. Cas., 370.
(67) R. v. Little, 2 Can. Cr. Cas., 240.
(68) R. v. Bennett, 5 Can. Cr. Cas., 456.

The Quebec License Law, 1900, provides that an accused, who, on being convicted, applies for a *certiorari*, must make a deposit of the amount of the fine and costs awarded, plus $50 to meet future costs; and it has been held that this deposit is a deposit in security and not in sequestration, that the accused's application for *certiorari* could not, on the *certiorari* being set aside, take away from him his right of option to serve the term of imprisonment to which he had been condemned, in place of paying the fine and costs awarded, that, although the writ of *certiorari* suspends the execution of the sentence, the effect of quashing the writ is merely to render the person liable to the term of imprisonment, and that, if he makes option to undergo the imprisonment, he has a right to be reimbursed the portion of deposit representing the fine and costs, the extra $50, however, being applied to the payment of the extra costs in connection with the *certiorari* proceedings. (69)

Certiorari does not lie to bring up a warrant of commitment to be quashed upon grounds not affecting the conviction under which the warrant issued, nor will the court quash the warrant in *certiorari* proceedings, in which the conviction is also brought up, if the conviction itself is valid. The proper proceeding for reviewing, upon grounds not affecting the conviction, the validity of a warrant of commitment under which the accused is in custody, is by way of *habeas corpus*. (70)

The remedy by *habeas corpus* not being open to one imprisoned under the sentence of a competent court, having general jurisdiction of the case, such prisoner cannot, on the return of a writ shewing such sentence, demand an ancillary writ of *certiorari* for the production of the record in the case in which the sentence was pronounced. (71)

A writ of *certiorari* and a return thereto by the convicting justice are necessary preliminaries to an application to quash a summary conviction, notwithstanding the fact that the original conviction is on file in the court having jurisdiction in *certiorari* matters. Where the same court has jurisdiction both in appeal and upon *certiorari*, and a summary conviction has been transmitted by the magistrate and filed in such court under section 757, *ante*, the writ of *certiorari* cannot be dispensed with for the purposes of a motion to quash the conviction. (72)

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(69) Wing v. Skotte, 10 Can. Cr. Cas., 171.

(70) *Ex p.* Bertin, 10 Can. Cr. Cas., 65.

(71) *Ex p.* Goldsberry, 10 Can. Cr. Cas., 392.

(72) R. v. Gehrke, 11 Can. Cr. Cas., 109. But see R. v. Rondeau, 9 Can. Cr. Cas., 523.

WHAT COURTS CAN DEAL, BY WAY OF CERTIORARI, WITH CRIMINAL MATTERS?

Under subsection 35 of section 2, *ante*, the Superior Courts of Criminal Jurisdiction of the various provinces are the following:—(*a*) in the province of Ontario, the High Court of Justice, (*b*) in the province of Quebec, the Court of King's Bench, (*c*) in the provinces of Nova Scotia, New Brunswick and British Columbia, the Supreme Court, (*d*) in the province of Prince Edward Island, the Supreme Court of Judicature, (*e*) in the province of Manitoba, the Court of King's Bench (Crown Side), (*f*) in the provinces of Saskatchewan and Alberta, the Supreme Court of the Northwest Territories, and (*g*) in the Yukon Territory, the Territorial Court; and, by section 576, *ante*, every Superior Court of Criminal Jurisdiction is authorized to make rules regulating, *in criminal matters*, the pleading practice and procedure in the Court, including the subjects of *mandamus, certiorari, habeas corpus, prohibition*, etc.,—there being, however, (as to Ontario) an exception by which the authority, for making such rules of court applicable to Superior Courts of Criminal Jurisdiction, is vested in the Supreme Court of Judicature.

As, since Confederation, the provincial legislatures have no power to deal with the practice and procedure in criminal cases, over which the Dominion Parliament exercises legislative authority, (73) and as, (by section 576), the Criminal Code expressly provides for the making,—by every Superior Court of Criminal Jurisdiction,—of rules of Court regulating, in *criminal matters*, the pleading, practice and procedure in the Court, including the subjects of *mandamus, certiorari, habeas corpus, prohibition*, etc., it seems only reasonable to conclude that the authority of the Superior Courts of *civil* jurisdiction, in the various provinces, to deal with the subjects of *mandamus, certiorari, habeas corpus, prohibition*, etc., is confined to *civil* matters and to offences against and in contravention of *provincial* laws, and that the only courts which have the right to deal, by way of *mandamus, certiorari, habeas corpus, prohibition*, etc., with criminal cases over which the Dominion Parliament exercises legislative authority, are the Superior Courts of Criminal Jurisdiction; although, this conclusion may seem to be at variance with some decisions of the Superior Court in the Province of Quebec, (exercising civil juris-

(73) *Re* Boucher, 4 Ont. A. R., 191, 193; R. v. McAuley, 14 O. R., 643. (See Remarks of Ross, J., at page 657 of the Report); R. v. Beemer, 15 O. R., 266, 270; R. v. Crothers, 11 Man. L. R., 567; R. v. Toland, 22 O. R., 505; R. v. Levinger, 22 O. R., 690; R. v. Wason, 17 Ont. A. R., 221. *See* R. v. Beale, 1 Can. Cr. Cas., 235; and R. v. Bennett, 5 Can. Cr. Cas., p. 457.

diction), holding that that Court had power, by way of *certiorari*, over convictions made by a justice of the peace in criminal cases; —the ground taken being that the power of the Superior Court to control all inferior jurisdictions is to be found in the statutes consolidated and incorporated in the Revised Statutes of Quebec, Article 2329 of which gives to the Superior Court, power and control over all courts except the Court of King's Bench. (74).

But, is not the power and control, here referred to as being vested in the Superior Court of the Province of Quebec,—which is a Court of *civil* jurisdiction,—a power and control limited to civil matters and to offences against and contraventions of provincial laws, and not extending to criminal matters within the legislative authority of the Dominion Parliament?

It has also been held that, where the Montreal Harbor Commissioners, acting under the *Montreal Harbor Commissioners' Act*, 1894, deprived,—by their conviction,—a pilot of his license, their conviction was subject to proceedings, by *certiorari*, of the Superior Court, the principal ground of this latter decision being, that, in the opinion of the Court, the right of appeal provided by the then section 879 (now 749) of the Criminal Code does not apply to a matter of discipline such as is represented by a sentence or order cancelling a pilot's license. (75).

In a comparatively recent case, it has, however, been held in the province of Quebec, that provincial statutes in force at the time of Confederation, regarding *certiorari* in criminal matters, are not in force, in so far as they have been repealed by or are inconsistent with Dominion legislation; that the Federal Parliament has the exclusive right to declare before what court, existing in each province and exercising criminal jurisdiction, proceedings in criminal cases, including proceedings by *certiorari* after conviction shall be carried on; that the Superior Court has no jurisdiction to quash, by way of *certiorari*, decisions rendered by magistrates sitting for the summary trial of indictable offences; and that the review of such decisions, in so far as they are reviewable, belongs, in the province of Quebec, exclusively to the Court of King's Bench. (76).

See cases on the subject of *certiorari* cited at pp. 940-2 of the Author's second edition of the Criminal Code.

(74) R. v. Mercier, 6 Can. Cr. Cas., 44. And see Leonard v. Pelletier, 9 Can. Cr. Cas., 19; *Ex p.* Goldsberry, 10 Can. Cr. Cas., 392.

(75) Arcand v. Montreal Harbor Commissioners, 4 Can. Cr. Cas., 491. See, also, Perrault v. Montreal Harbor Commissioners, 4 Can. Cr. Cas., 501.

(76) R. v. Marquis, 8 Can. Cr. Cas., 346.

FORMS OF CERTIORARI PROCEEDINGS.

NOTICE OF APPLICATION FOR CERTIORARI.

In the (*Name of Court to be applied to*).

The King vs. A. B.

To

J. S., Esquire,

One of His Majesty's Justices of the Peace (*or* Police Magistrate) for the of

TAKE NOTICE that, inasmuch as A. B., of was on the day of 19 , at the of in the of , convicted by you of having (Here state the offence, as in the conviction), a motion will on the day of instant, at ten o'clock in the forenoon, or so soon thereafter as Counsel can be heard, be made on behalf of the said A. B. before a Judge of this Honorable Court sitting at for an order for a writ of *certiorari* to issue out of this Court, directed to you and to the Clerk of the Peace for the of , for the removal of the said conviction into this Court for the purpose of having the same quashed and the said A. B. discharged therefrom, upon the ground that the said conviction is invalid, (*or*, that the penalty imposed is illegal and beyond or in excess of your jurisdiction, *or* as the case may be), for the following reasons: (*Here set out the reasons relied upon*).

Dated at this day of 19 .

C. D.,

Solicitor for the said A. B.

MOTION FOR CERTIORARI.

In the (*Name of Court applied to*).

The King vs. A. B.

MOTION, on the part of the defendant, that,

1. In view of the affidavit herewith filed of in verification of exhibits B, C, D, and E, as true copies of the proceedings therein mentioned (*or*, — if copies of the proceedings cannot be obtained, — "explaining the purport of the proceedings therein mentioned and setting forth the efforts made to obtain and the reasons for not being able to obtain copies thereof").

2. And, in view of the hereunto subjoined affidavit of the defendant and of the facts therein alleged and the grounds thereby appearing,

A writ of *certiorari* be ordered to issue for the removal into this Honorable Court of the said conviction and warrant of commitment, for the purpose of having the same quashed and the defendant discharged therefrom.

AFFIDAVIT AS TO PROCEEDINGS.

In the (*Name of Court applied to*).

The King vs. A. B.

I, of , being duly sworn, make oath and say: —

1. That the several paper writings hereunto annexed, marked respectively B, C, D, and E, to this, my affidavit, are true copies of the original documents of which they severally purport to be copies and were copied by me from the originals now in the hands of J. S., Esquire, a Justice of the Peace (*or* Police Magistrate) for the , of , (*or* now on file in the office of the clerk of the peace for the of).

2. That I have examined and carefully compared the warrant of commitment now in the hands of the keeper of the common gaol for the county of , (*or* as the case may), upon which the said A. B. is now held in custody in the said gaol, (*or* is committed under the said conviction, *or* as the case may be); and that the paper writing hereunto annexed marked exhibit , to this, my affidavit, is a true copy of the said warrant of commitment.

SWORN, etc.

AFFIDAVIT OF DEFENDANT.

In the (*Name of Court applied to*).

The King vs. A. B.

I, A. B., of , in the of , being duly sworn, make oath and say: —

1. I am the defendant above named.

2. (*Set forth the facts showing the conviction and warrant of commitment to be bad, and the grounds upon which the application for certiorari and for quashing the conviction are based*).

SWORN, etc.

ORDER FOR CERTIORARI.

In the (*Name of Court*),

Tuesday, the day of

Present (*Name of Judge*).

The King vs. A. B.

Upon the application of the said A. B., upon reading the notice served herein and the affidavit of service thereof upon J. S., Esquire, the justice of the peace (*or* police magistrate) therein named

and upon reading the affidavit of filed, and the exhibits therein referred to, and the affidavit of the said A. B. and the other papers filed on his behalf upon this motion, and upon hearing what was said by the respective solicitors (*or* counsel) for the said A. B., and for the prosecutor E. F., and also for the convicting or committing magistrate (*or*, as the case may be).

IT IS ORDERED that a writ of *certiorari* do issue out of this Court directed to J. S., Esquire one of His Majesty's Justices of the peace (*or* police magistrate) for the of (*as the case may be*), to remove and return into this Court all and singular the conviction and all other proceedings, and all things touching the same, had and taken against the said A. B. before the said justice of the peace (*or* police magistrate) upon the information of for that the said A. B., etc., (*Here set out the charge*).

HABEAS CORPUS.

Habeas Corpus may be applied for whenever a person, by or on whose behalf it is applied for, is, in any manner, illegally restrained of his liberty.

See cases, on this subject, cited at pp. 950-952 of the Author's second edition.

An application for a writ of *habeas corpus* must be accompanied by the affidavit of the prisoner, or by evidence that he is so coerced that his affidavit cannot be obtained. (77).

A writ of *habeas corpus* to test the legality of a child's detention is not irregular because issued on the petition of the child himself, who, being a minor, is under disability to bring action in respect of civil rights. (78).

A writ of *habeas corpus* issued in Ontario should be signed by the judge who awards it as well as by the officer who issues it. (78*a*).

An affidavit of the gaoler verifying a copy of the warrant claimed as the cause of detention may be accepted as a return to a writ or order of *habeas corpus*. (79).

It has been held that, on *habeas corpus* proceedings, proof by affidavit may be admitted to shew that a preliminary enquiry and committal for trial took place on a Sunday; (80) or that the constable's return to a warrant of distress,—to the effect that there was not sufficient property to satisfy it,—is false, and that,

(77) R. v. Black, 8 Can. Cr. Cas., 405.
(78) *Re* A. B., 9 Can. Cr. Cas., 390.
(78*a*) R. v. St-Clair, 3 Can. Cr. Cas., 551.
(79) R. v. Skinner, 9 Can. Cr. Cas., 558.
(80) R. v. Cavalier, 1 Can. Cr. Cas., 134.

therefore, the commitment based thereon and under which the party is imprisoned was issued improperly. (81).

The duty of a judge under a writ of *habeas corpus* is to examine whether the committing magistrate has jurisdiction, whether the committal is legal, and whether any crime known to the law is alleged to have been committed, but not to enquire into or reverse the magistrate's decision as regards its propriety or impropriety on the merits. (82).

A prisoner detained under a warrant which is, in form, one of committal for trial but which charges an offence punishable only on summary conviction, will be discharged on *habeas corpus*. Although there may, in fact, have been a summary hearing and summary conviction thereon, if the warrant of commitment returned as the cause of detention is bad on its face, in not alleging that the defendant has been convicted, a formal conviction cannot be received to remedy the defect as section 1122 *ante* applies only to cases in which the warrant alleges a conviction. (83).

An accused person, who is summarily convicted on his plea of guilty upon a charge of "unlawfully" committing an indecent act, and who is sentenced to imprisonment, is entitled to be discharged on *habeas corpus*, inasmuch as the commitment and conviction disclose no offence under the criminal law. (84).

Where a summary conviction and the commitment thereon charges no offence, the prisoner will be discharged; as, for instance, a conviction for being "a loose, idle person or vagrant," without specifying in what the vagrancy consisted. (85). And an information and warrant of arrest thereunder charging the accused as an accessory to the violation of a statute named, without specifying the fact as to which he was alleged to be accessory was held void, and the accused was discharged. (86).

A commitment by a tribunal of inferior jurisdiction, may be severable, and where imprisonment is ordered for a term, and a further term in default of payment of a fine and costs, the prisoner is not entitled to his release on *habeas corpus* during the first term because of the costs not being ascertained in the commitment, but leave will be reserved to him to re-apply at the expiration of the first term. (87).

Where the warrant of commitment was issued in one county against the accused, who was not then in custody, and he was arrest-

(81) *Ex p.* Fitzpatrick, 5 Can. Cr. Cas., 191.
(82) R. v. Gillespie, 1 Can. Cr. Cas., 551.
(83) R. v. Lalonde, 9 Can. Cr. Cas., 501.
(84) *Ex p.* O'Shaughnessy, 8 Can. Cr. Cas., 136.
(85) R. v. McCormack, 7 Can. Cr. Cas., 135.
(86) R. v. Holley, 4 Can. Cr. Cas., 510.
(87) R. v. Carlisle, 7 Can. Cr. Cas., 470.

ed thereunder in another county, without any endorsement of the warrant, and was brought back to the county in which the warrant issued, and there imprisoned as the warrant directed, the irregular arrest is not a ground for releasing the accused on *habeas corpus*. (88)

Chinamen passing through Canada in bond in the custody of a transportation company for shipment from Hong Kong to the West Indies cannot change their destination to the United States boundary, even upon tender of the fare from the line of transit to the boundary, nor are they entitled, upon *habeas corpus*, to be set at liberty in Canada, unless they have paid the Chinese immigration tax imposed by the Canadian Government and have been duly entered as immigrants to Canada. (89)

Where a return to a writ of *habeas corpus* or to an order in the nature of such a writ specifies two warrants of commitment for the same offence, and neither the second warrant nor the return declares the second warrant to be in substitution for or in amendment of the first, which is irregular and bad, the prisoner should be discharged. (90)

Where proceedings in an inferior court are removed by *certiorari* into a superior court, after a verdict or finding against the accused, but before the date to which the case was adjourned for sentence, a warrant of commitment issued by the inferior court in enforcement of the judgment pronounced by it, on the latter date, is invalid and the prisoner will be discharged from custody. (91)

The fact that at the time of the application, the person against whom the writ is asked has not in his custody or power the person said to be detained is no ground for refusing the writ, if it appear that the person has illegally parted with such custody; for although, as a rule, when the detention has ceased, the writ is inapplicable, still, when a counterfeited release has taken place, and a pretended ignorance of the place of custody or of the identity of the present custodian is insisted on, the Court ought to examine into the facts. (92)

It has been held, in Nova Scotia, that a person, made a respondent to an application for *habeas corpus* in a criminal matter, who does not appear of record to be the prosecutor, and who does not appear on the application, is not liable for costs on the discharge of the prisoner in the *habeas corpus* proceedings, although the conviction in question was for stealing his property. (93)

(88) R. v. Whitaside, 8 Can. Cr. Cas., 478.
(89) *Re* Wing Toy *et al.*, 7 Can. Cr. Cas., 551.
(90) R. v. Venot, 6 Can. Cr. Cas., 200.
(91) R. v. Foster, 7 Can. Cr. Cas., 40.
(92) R. v. Bernardo, 24 Q. B. D., 283; Bernardo v. McHugh, 61 L. J. Q. B., 721.
(93) R. v. Bowers, 6 Can. Cr. Cas., 100.

Leave may be given on the hearing of a *habeas corpus* application to substitute an amended conviction and an amended commitment for the invalid conviction and commitment attacked, whether the defect be one of form only or one of substance. (94)

If the certificate of sentence to imprisonment in a penitentiary is irregular for omission of the date of sentence, leave may be given, on a *habeas corpus* motion, to return an amended certificate correcting the omission. (95).

Under section 754 *ante* and 1124, *post*, the Court has power to make certain amendments in a summary conviction returned on *certiorari*, whether the *certiorari* is one preliminary to a motion to quash the conviction or is in aid of a writ of *habeas corpus*. (96).

A conviction which is invalid on its face should not, upon *habeas corpus* proceedings, be amended under section 1124, *post*, unless the Court, if trying the accused in the first instance, would have convicted upon the same depositions. (97).

Where concurrent proceedings are taken by *certiorari* and *habeas corpus* in the province of Quebec, and the writ of *habeas corpus* is maintained upon an objection appearing upon the face of the warrant of commitment, the order for costs against the prosecutor in respect thereof should not include the costs incurred upon the writ of *certiorari*, inasmuch as it appeared on the face of the warrant that the justice had exceeded his jurisdiction and that recourse to an ancillary writ of *certiorari* was unnecessary. (98).

In Manitoba, it has been held that there is no appeal to the full court of King's Bench there, from the decision of a single judge of that court refusing a motion for *habeas corpus* to discharge a prisoner from custody, but that successive applications for the writ may be made to each judge. (99).

Sec. 820. Sec. **1123. Conviction or warrant under Juvenile Offenders' Part.**—No conviction under Part XVII shall be quashed for want of form, or be removed by *certiorari* or otherwise into any Court of record; and no warrant of commitment under the said Part shall be held void by reason of any defect therein, if it is therein alleged that the

(94) R. v. Barre, 11 Can. Cr. Cas., 1; Can. Ann. Dig., (1906), 150.
(95) R. v. Wright, 10 Can. Cr. Cas., 461.
(96) R. v. Murdock, 4 Can. Cr. Cas., 82.
(97) R. v. Law Bow, 7 Can. Cr. Cas., 468.
(98) R. v. Coté, 8 Can. Cr. Cas., 393.
(99) R. v. Barre, 11 Can. Cr. Cas., 1. And see R. v. Carter et al., 5 Can. Cr. Cas., 401.

person has been convicted, and there is a good and valid conviction to sustain the same. (100).

Sec. 889. Sec. **1124. Conviction or order removed by certiorari not to be held invalid for irregularity, — When.** No conviction or order made by any justice, and no warrant for enforcing the same, shall, on being removed by *certiorari*, be held invalid for any irregularity, informality or insufficiency therein, if the court or judge before which or whom the question is raised, upon perusal of the depositions, is satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence: Provided that the court or judge, where so satisfied, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section seven hundred and fifty-four conferred upon the court to which an appeal is taken under the provisions of section seven hundred and forty-nine.

2. Any statement which, under this Act or otherwise, would be sufficient if contained in a conviction, shall also be sufficient if contained in an information, summons, order or warrant.

Sec. 890. Sec. **1125. Irregularities within the preceding section.** — The following matters amongst others shall be held to be within the provisions of the last preceding section: —

(*a*) The statement of the adjudication, or of any other matter or thing, in the past tense instead of in the present;

(*b*) The punishment imposed being less than the punishment by law assigned to the offence stated in the conviction

(100) Taken (but somewhat altered) from par. 2 of the old sec. 820.

or order, or to the offence which appears by the depositions to have been committed;

(*c*) The omission to negative circumstances, the existence of which would make the act complained of lawful, whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section.

2. Nothing in this section contained shall be construed to restrict the generality of the wording of the last preceding section.

Where a perusal of the depositions returned on *certiorari* satisfies the court that an offence was committed as stated in the conviction, and of the date and place of same, which had not been stated in the conviction, the irregularity in not stating such date and place is cured by section 1124, unless an excessive punishment has been imposed by the magistrate. (101)

A summary conviction purporting to be under the Ontario liquor license law for unlawfully allowing liquor to be sold (which is not in terms an offence under the statute) has been held, upon *certiorari* proceedings, to be amendable, if the evidence warrants it, so as to make it a conviction for selling without a license, such an amendment being permissible under the Criminal Code which is made applicable, by provincial enactment, to prosecutions under Ontario laws. (102)

Sec. 892. Sec. **1126. General order prescribing security with regard to motion to quash conviction.**

Unchanged.

Sec. 895. Sec. **1127. No writ of procedendo necessary on motion to quash being refused.**

Meaning unchanged.

Sec. 894. Sec. **1128. Conviction, etc., not to be quashed for want of proof of proclamation, etc.** — No order, conviction or other proceeding made by any justice or stipendiary magistrate shall be quashed or set aside, and no defendant shall be discharged by reason of any objection that evidence has not been given of a proclamation or order of the Governor in Council or of any rules, regulations or

(101) R. v. Lewis, 6 Can. Cr. Cas., 499.
(102) R. v. Meikleham, 10 Can. Cr. Cas., 382.

by-laws made by the Governor in Council in pursuance of a statute of Canada or of the publication of such proclamation, order, rules, regulations or by-laws in the Canada Gazette.

2. Such proclamation, order, rules, regulations and by-laws and the publication thereof shall be judicially noticed.

Altered slightly, as here set forth

Sec. 896. Sec. **1129. Conviction not to be set aside for defect in form.** — Whenever it appears by *any* conviction *made by a justice or stipendiary magistrate* that the defendant has appeared and pleaded, and the merits have been tried, and the defendant has not appealed against the conviction, where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. *Altered, as here set forth.*

Sec. 800. Sec. **1130. Proceedings under Summary Trials Part not quashed nor voided for want of form.**— No conviction, sentence or proceeding under Part XVI. shall be quashed for want of form; and no warrant of commitment upon a conviction under the said Part shall be held void by reason of any defect therein, if it is therein alleged that the offender has been convicted and there is a good and valid conviction to sustain the same.

Altered, as here set forth.

Sec. 891. Sec. **1131. No action against official when conviction quashed.** — If an application is made to quash a conviction, order or other proceeding made or had by or before a justice or stipendiary magistrate, on the ground that such justice or stipendiary has exceeded his jurisdiction, the court or judge to which or whom the application is made, may, as a condition of quashing the conviction, order or other proceeding, if the court or judge thinks fit so to do, provide that no action

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shall be brought against the justice or stipendiary by or before whom such conviction, order or other proceeding was made or had, or against any officer acting thereunder or under any warrant issued to enforce any such conviction or order.

Altered, as here set forth.

Sec. **1132. Proceedings relating to Part III not void for defect of form.** — No action or other proceeding, warrant, judgment, order or other instrument or writing, authorized by any provisions of Part XII relating to Part III. or necessary to carry out its provisions, shall be held void or be allowed to fail for defect of form. (103)

PART XXIII.

RETURNS.

Sec. 902. Sec. **1133. Returns respecting convictions and moneys received.** — Every Justice shall, quarterly, on or before the second Tuesday in each of the months of March, June, September and December in each year, make to the Clerk of the Peace or other proper officer of the Court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him and of the receipt and application by him of the moneys received from the defendants.

2. Such return shall include all convictions and other matters not included in some previous return, and shall be in form 75.

3. If two or more justices are present, and join in the conviction, they shall make a joint return.

4. Every justice, to whom any such moneys are afterwards paid, shall make a return of the receipt and application thereof,

(103) Taken from R. S. C., (1886), c. 151, sec. 23, forming part of the Appendix to the old Criminal Code.

to the court having jurisdiction in appeal as hereinbefore provided, which shall be filed by the clerk of the peace or the proper officer of such court with the records of his office.

5. In the province of Prince Edward Island such return shall be made to the Clerk of the Court of Assize of the county in which the convictions are made, and on or before the fourteenth day next before the sitting of the said Court next after such convictions are so made.

6. Every such return shall be made in the district of Nipissing, in the province of Ontario, to the Clerk of the Peace for the county of Renfrew, in the said province. (104)

Sec. 902. Sec. 905. Sec. **1134. Neglect to make return, or making false return, or taking unlawful fees.** — Every justice, before whom any conviction takes place or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, shall incur a penalty of eighty dollars, together with costs of suit, in the discretion of the Court, which may be recovered by any person who sues for the same by action of debt or information in any Court of record in the province in which such return ought to have been or is made.

2. One moiety of such penalty shall belong to the person suing, and the other moiety to His Majesty, for the public uses of Canada.

3. Nothing in this section shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any Justice, for any offence, the commission of which would have subjected him to indictment immediately before the first day of

(104) Taken from paragraphs 1 to 5 of the old sec. 902.

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July one thousand eight hundred and ninety-three. (105)

Sec. 105. Sec. **1135.** **Return by Justice of certificates.** — When any certificate is granted under section one hundred and eighteen of this Act, the justice granting it shall forthwith make a return thereof to the proper officer in the county, district or place in which such certificate has been granted for receiving returns under this Part. On default of making such return within ninety days after a certificate is granted, the justice shall be liable, on summary conviction, to a penalty of not more than ten dollars.

Sec. **1136.** **Monthly returns under Part III.** — Every Commissioner under Part III of this Act shall make a monthly return to the Secretary of State of all weapons delivered to him, and by him detained under Part III. (106)

Sec. 903. Sec. **1137.** **Posting up returns.** — The Clerk of the Peace of the district or county to whom returns under this Part are made, or the proper officer, other than the Clerk of the Peace, to whom such returns are made, shall, within seven days after the adjournment of the next ensuing General or Quarter Sessions, or of the term or sitting of such other Court having jurisdiction in appeal as aforesaid, cause the said returns to be posted up in the court-house of the district or county, and also in a conspicuous place in the office of such Clerk of the Peace, or other proper officer, for public inspection, and the same shall continue to be so posted up and exhibited until the end of the next ensuing General or Quarter Sessions of the Peace, or for the term or sitting of such other Court as aforesaid.

2. For every schedule so made and exhibited by such Clerk or Officer, he shall be al-

(105) Taken from paragraphs 6 and 7 of the old sec. 902, from 4 Ed. VII, c. 9, sec. 1, and from sec. 905 of the old Code.

(106) Taken from R. S. C., (1886), c. 151, sec. 12, forming part of the Appendix to the old Code.

lowed such fee as is fixed by competent authority.

3. Such Clerk of the Peace or other officer of each district or county, within twenty days after the end of each General or Quarter Sessions of the Peace, or the sitting of such Court as aforesaid, shall transmit to the Minister of Finance a true copy of all such returns made within his district or county. *Slightly altered.*

Sec. 906. Sec. **1138. Mistake not to vitiate return.** *Unchanged.*

Sec. 823. Sec. **1139. Returns under Part XVII.** — Every clerk of the peace or other proper officer shall transmit to the Minister of Agriculture a quarterly return of the names of offenders, the offences and punishments mentioned in convictions transmitted to him under Part XVII. *Slightly altered in the wording.*

PART XXIV.

LIMITATIONS.

Prosecutions for Crimes.

Sec. 551. Sec. **1140. Limitations of time for commencing certain prosecutions.** — No prosecution for an offence against this Act, or action for penalties or forfeiture, shall be commenced, —

(*a*) after the expiration of three years from the time of its commission if such offence be

(i) treason, except treason by killing His Majesty, or where the overt act alleged is an attempt to injure the person of His Majesty — section seventy-four,

(ii) treasonable offences — section seventy-eight,

(iii) any offence against Part VII. relating to the fraudulent marking of merchandise; or,

(*b*) after the expiration of two years from its commission if such offence be

(i) a fraud upon the government —

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section one hundred and fifty-eight,

(ii) a corrupt practice in municipal affairs — section one hundred and sixty-one,

(iii) unlawfully solemnizing marriage — section three hundred and eleven; or,

(*c*) after the expiration of one year from its commission if such offence be

(i) opposing reading of Riot Act and continuing together after proclamation — section ninety-two,

(ii) refusing to deliver weapon to justice — section one hundred and twenty-six,

(iii) coming armed near public meeting—section one hundred and twenty-seven,

(iv) lying in wait near public meeting — section one hundred and twenty-eight,

(v) seduction of girl under sixteen—section two hundred and eleven.

(vi) seduction under promise of marriage — section two hundred and twelve.

(vii) seduction of a ward or employee — section two hundred and thirteen.

(viii) parent or guardian procuring defilement of girl — section two hundred and fifteen,

(ix) unlawfully defiling women, procuring, etc.—section two hundred and sixteen,

(x) householders permitting defilement of girls on their premises — section two hundred and seventeen; or,

(*d*) after the expiration of six months from its commission if the offence be

(i) unlawful drilling—section ninety-eight,

(ii) being unlawfully drilled — section ninety-nine,

(iii) having possession of offensive weapons for purposes dangerous to the public peace—section one hundred and fifteen,

(iv) proprietor of newspaper publishing advertisement offering reward for recovery of stolen property — section one hundred and eighty-three, paragraph (*d*); or,

(*e*) after the expiration of three months from its commission if the offence be

(i) cruelty to animals—sections five hundred and forty-two and five hundred and forty-three.

(ii) railways and vessels violating provisions relating to conveyance of cattle—section five hundred and forty-four,

(iii) refusing peace officer or constable admission—section five hundred and forty-five; or,

(*f*) after the expiration of one month from its commission if the offence be improper use of offensive weapons under sections one hundred and sixteen and one hundred and eighteen to one hundred and twenty-four inclusive.

2. No person shall be prosecuted, under the provisions of section seventy-four or seventy-eight of this Act, for any overt act of treason expressed or declared by open and advised speaking unless information of such overtact, and of the words by which the same was expressed or declared, is given upon oath to a justice within six days after the words are spoken and a warrant for the apprehension of the offender is issued within ten days after such information is given. *Altered, as here set forth.*

Secs. 930. Sec. **1141. Limitation of action for penalty or forfeiture.** No action, suit or information shall be brought or laid for any penalty or

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	forfeiture under any Act, except within two years after the cause of action arises or after the offence for which such penalty or forfeiture is imposed is committed, unless the time is otherwise limited by any Act or by law.	*Slightly altered.*
Sec. 841.	Sec. **1142. Limitation of prosecutions of offences punishable on summary conviction.** In the case of any offence punishable on summary conviction, if no time is specially limited for making any complaint, or laying any information, in the Act or law relating to the particular case, the complaint shall be made, or the information shall be laid, within six months from the time when the matter of complaint or information arose, except in the Northwest Territories and the Yukon Territory, in all which Territories the time within which such complaint may be made, or information laid, shall be twelve months from the time when the matter of the complaint or information arose.	*Altered, as here set forth.* (107)

The time limited for the commencement of a criminal prosecution begins to run as soon as the act which constitutes the offence has taken place. (108)

Sunday must be counted, unless expressly excluded. (109)

"Bringing the prosecution" is not the hearing of trial, but it is the initiation of the proceedings by the prosecutor. (110)

Where the law requires the party to be *prosecuted* or the prosecution to be *commenced* within a limited time after the commission of the offence, it is sufficient to make the complaint or lay the information within that time, although the conviction may not take place until after the expiration of the time limited. (111)

But where the law requires the party to be *convicted* within a stated time after the commission of the offence, the mere laying of the information within that time will not suffice; in that case, the conviction itself must be made within the limited time, or it will be void. (112)

(107) And as since amended by the *Criminal Code Amendment Act*, 1907, (6 and 7 Ed. VII., c. 8).
(108) Jacomb v. Dodgson, 32 L. J. M. C., 113.
(109) *Ex p.* Simpkin, 29 L. J. M. C., 23.
(110) R. v. McKenzie, 23 N. S. R., 6.
(111) R. v. Barrett, 1 Salk., 383.
(112) R. v. Manwaring, 27 L. J. M. C., 278.

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW.

Sec. 975. Sec. **1143. Time and place of action.** *Unchanged.*

Sec. 976. Sec. **1144. Notice in writing of action.** *Unchanged.*

Sec. 977. Sec. **1145. Defence. General issue.** *Unchanged.*

Sec. 978. Sec. **1146. Tender or payment into Court.** *Unchanged.*

Sec. 979. Sec. **1147. Judgment. — Costs.**
Unchanged in meaning.

Sec. 980. Sec. **1148. Other protecting Acts remain.** *Unchanged.*

Sec. **1149. Actions under Part III; limitation; defense; venue; etc.** Every action brought against any commissioner under Part III. of this Act or any justice, constable, peace officer or other person, for anything done in pursuance of the said Part, shall be commenced within six months next after the alleged cause of action arises; and the venue shall be laid or the action instituted in the district or county or place where the cause of action arose; and the defendant may plead the general issue and give this Act and the special matter in evidence.

2. If such action is brought after the time limited, or the venue is laid or the action brought in any other district, county or place than in this section prescribed, the judgment or verdict shall be given for the defendant; and in such case, or if the judgment or verdict is given for the defendant on the merits, or if the plaintiff becomes non-suited or discontinues after appearance is entered, or has judgment rendered against him on demurrer, the defendant shall be entitled to recover double costs. (113)

Sec. 904. Sec. **1150. Actions for penalties under section 1134.** All actions for penalties arising under the provisions of section eleven hundred and thirty-four shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such

(113) Taken from R. S. C., (1886), c. 151, s. 24, forming part of the Appendix to the old Code.

penalties have been incurred; and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases. *Not materially altered.*

Sec. 900. Sec. **1151. No action against a justice for enforcing a conviction affirmed or amended under section 785.** No action or proceeding shall be commenced or had against a justice for enforcing a conviction, order or determination affirmed, amended or made by the court under section seven hundred and sixty-five. (114)

PART XXV.

FORMS.

Sec. 541. Sec. **1152.** The several forms in this Part, varied to
Sec. 982. suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in the cases thereby respectively provided for; and may, when made for one class of officials, be varied so as to apply to any other class having the same jurisdiction. (115)

In the old Act, the forms were contained in Schedule One thereto and were marked alphabetically from A to YYY; while, in the new Act, all the same forms (with one or two exceptions, and with slight alterations in some of them), are numbered, (instead of being lettered), and there is a difference in their arrangement or order.

J (Sec. 569). 1. (Sec. **629**). **Information to obtain search warrant.**

I (Sec. 569). 2. (Sec. **630**). **Warrant to search.**

(114) Taken from the latter part of the old section 900.

(115) Taken from the latter part of section 541 and from section 982 of the old Code.

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C (Sec. 558).	3. (Sec. 654).	Information and Complaint for an Indictable Offence.
D (Sec. 560).	4. (Sec. 656).	Warrant to apprehend a person charged with an Indictable Offence committed on the High Seas or Abroad.
E (Sec. 562).	5. (Sec. 658).	Summons to a person charged with an Indictable Offence.
F (Sec. 563).	6. (Sec. 659).	Warrant in the first instance to apprehend a person charged with an Indictable Offence.
G (Sec. 563).	7. (Sec. 660).	Warrant when the summons is disobeyed.
H (Sec. 565).	8. (Sec. 662).	Endorsement in Backing a warrant.
A (Sec. 557).	9. (Sec. 665).	Warrant to convey before a Justice of another county.
B (Sec. 557).	10. (Sec. 666).	Receipt to be given to the Constable by the Justice for the County in which the Offence was committed.
K (Sec. 580).	11. (Sec. 671).	Summons to a witness.
L (Sec. 582).	12. (Sec. 673).	Warrant when a witness has not obeyed the summons.
PP (Sec. 781).	13. (Sec. 674). (Sec. 842).	Conviction for contempt.
M (Sec. 583).	14. (Sec. 675).	Warrant for a witness in the first instance.
N (Sec. 584).	15. (Sec. 677).	Warrant when a witness has not obeyed the subpoena.
O (Sec. 585).	16. (Sec. 678).	Warrant of Commitment of a witness for refusing to be sworn or to give evidence.
P (Sec. 586).	17. (Sec. 679).	Warrant remanding a prisoner.
Q (Sec. 587).	18. (Sec. 681).	Recognizance of Bail instead of Remand on an Adjournment of Examination.
R (Sec. 598).		Certificate of non-appearance to be endorsed on Recognizance. *Omitted here.* (116)
S (Sec. 590).	19. (Sec. 682).	Deposition of a witness.
T (Sec. 591).	20. (Sec. 684).	Statement of Accused.

(116) Form 73 mentioned at p. 361, *post*, is based on the old Forms R and MMM.

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U (Sec. 595).	21. (Sec. 688).	Form of Recognizance where the Prosecutor requires the Justice to bind him over to prosecute after the charge is dismissed.
V (Sec. 596).	22. (Sec. 690).	Warrant of Commitment.
W (Sec. 598).	23. (Sec. 692).	Recognizance to prosecute.
X (Sec. 598).	24. (Sec. 692).	Recognizance to prosecute and give evidence.
Y (Sec. 598).	25. (Sec. 692).	Recognizance to give evidence.
Z (Sec. 599).	26. (Sec. 694).	Commitment of a witness for refusing to enter into the recognizance.
AA (Sec. 599).	27. (Sec. 694).	Order discharging witness when accused discharged.
BB (Sec. 601).	28. (Sec. 696).	Recognizance of Bail.
CC (Sec. 602).	29. (Sec. 698).	Warrant of Deliverance on Bail being given for a Prisoner already committed.
DD (Sec. 607).	30. (Sec. 704).	Gaoler's receipt to the Constable for the Prisoner.
VV (Sec. 859).	31. (Sec. 727).	Conviction for a Penalty to be Levied by Distress and in Default of Sufficient Distress, by Imprisonment.
WW (Sec. 859).	32. (Sec. 727).	Conviction for a penalty, and, in default of payment, imprisonment.
XX (Sec. 859).	33. (Sec. 727).	Conviction when the punishment is by Imprisonment, etc.
YY (Sec. 859).	34. (Sec. 727).	Order for Payment of Money to be Levied by Distress, and in Default of Distress, Imprisonment.
ZZ (Sec. 859).	35. (Sec. 727).	Order for Payment of Money, and in Default of Payment, Imprisonment.
AAA (Sec. 859).	36. (Sec. 727).	Order for any other Matter where the Disobeying of it is punishable with Imprisonment.
BBB (Sec. 862).	37. (Sec. 730).	Form of Order of Dismissal of an Information or Complaint.

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CCC (Sec. 862). 38.	(Sec. 730).	Form of Certificate of Dismissal.
DDD (Sec. 872). 39.	(Sec. 741).	Warrant of Distress upon a Conviction for a penalty.
EEE (Sec. 872). 40.	(Sec. 741).	Warrant of Distress upon an Order for the payment of money.
FFF (Sec. 872). 41.	(Sec. 741).	Warrant of Commitment upon a Conviction for a Penalty in the first instance.
GGG (Sec. 872). 42.	(Sec. 741).	Warrant of Commitment on an Order in the first instance.
III (Sec. 872). 43.	(Sec. 741).	Constable's Return to a Warrant of Distress.
JJJ (Sec. 872). 44.	(Sec. 741).	Warrant of Commitment for Want of Distress.
KKK (Sec. 873). 45.	(Sec. 742).	Warrant of Distress for Costs upon an Order for Dismissal of an Information or Complaint.
LLL (Sec. 873). 46.	(Sec. 742).	Warrant of Commitment for Want of Distress.
HHH (Sec. 874). 47.	(Sec. 743).	Endorsement in Backing a Warrant of Distress.
WWW (Sec. 959). 48.	(Sec. 748).	Complaint, by the Party threatened, for Sureties of the Peace.
XXX (Sec. 959). 49.	(Sec. 748). (Sec. 1058).	Form of Recognizance to keep the peace.
YYY (Sec. 959). 50.	(Sec. 748).	Form of Commitment in Default of Sureties.
OOO (Sec. 880). 51.	(Sec. 750).	Form of Recognizance to try the Appeal.
PPP (Sec. 898). 52.	(Sec. 759).	Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.
QQQ (Sec. 898). 53.	(Sec. 759).	Warrant of Distress for Costs of an Appeal against a Conviction or Order.
RRR (Sec. 898). 54.	(Sec. 759).	Warrant of Commitment for want of Distress in the last case.
QQ (Sec. 807). 55.	(Sec. 799).	Conviction.
RR (Sec. 807). 56.	(Sec. 799).	Conviction upon a Plea of Guilty.

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SS (Sec. 807).	57. (Sec. 799).	Certificate of Dismissal.
TT (Sec. 819).	58. (Sec. 813).	Certificate of Dismissal.
UU (Sec. 820).	59. (Sec. 814).	Conviction.
NN (Sec. 767).	60. (Sec. 827).	Form of Record when Prisoner pleads Guilty.
MM (Sec. 767).	61. (Sec. 833).	Form of Record when Prisoner pleads Not Guilty.
OO (Sec. 781).	62. (Sec. 842).	Warrant to apprehend Witness.
EE (Sec. 610).	63. (Sec. 845).	
(Sec. 626).	(Sec. 856).	Headings of Indictment.
FF (Sec. 611).	64. (Sec. 852).	Examples of Manner of stating offences.
GG (Sec. 648).	65. (Sec. 879).	Certificate of Indictment being found.
HH (Sec. 648).	66. (Sec. 880).	Warrant to Apprehend a person indicted.
II (Sec. 648).	67. (Sec. 881).	Warrant of Commitment of a person Indicted.
JJ (Sec. 648).	68. (Sec. 882).	Warrant to detain a Person indicted who is already in Custody for another Offence.
KK (Sec. 666).	69. (Sec. 925).	Challenge to Array.
LL (Sec. 668).	70. (Sec. 936).	Challenge to Poll.
UUU (Sec. 942).	71. (Sec. 1068).	Certificate of Execution of Judgment of Death.
VVV (Sec. 942).	72. (Sec. 1068).	Declaration of Sheriff and Others.
R (Sec. 589). MMM (Sec. 878).	73. (Sec. 1097).	Certificate of Non-appearance to be endorsed on the Defendant's Recognizance.
TTT (Sec. 916).	74. (Sec. 1105).	Writ of Fieri Facias.
SSS (Sec. 902).	75. (Sec. 1133).	Justices' Return.

THE CANADA EVIDENCE ACT.

2ND EDIT.	REVISED STATUTES 1906, c. 145	REMARKS
Sec. 1.	Sec. 1. Short title.	*Unchanged.*
	PART I.	
Sec. 2.	Sec. 2. Application.	*Unchanged.*
	WITNESSES.	
Sec. 3.	Sec. 3. Interest or crime, no bar.	*Unchanged.*
Sec. 4.	Sec. 4. Accused and husband and wife competent	

2ND EDIT.	REVISED STATUTES 1906, c. 145	REMARKS

Sec. 4. Sec. 4. **Witnesses for defence, and in certain cases, compellable witnesses for prosecution.** Every person charged with an offence, and, except as in this section otherwise provided, the wife or husband, as the case may be, of the person so charged, shall be a competent witness *for the defence*, whether the person, so charged, is charged solely or jointly with any other person. (1)

2. The wife or husband of a person charged with an offence against any of the sections 202 to 206 inclusive, (2) 211 to 219 inclusive, (3) 238, 239, (4) 244, 245, (5) 298 to 302 inclusive, (6) 307 to 311 inclusive, (7) 313 to 316 inclusive, (8) of the Criminal Code, shall be a competent and compellable witness for the prosecution without the consent of the person charged. *Added.*

3. No husband shall be compellable to disclose any communication made to him by his wife during their marriage and no wife shall be compellable to disclose any communication made to her by her husband during their marriage. (9)

4. Nothing in this section shall affect a case where the wife or husband of a person charged with an offence may, at common law, be called as a witness, without the consent of that person. *Added.*

5. The failure of the person charged or of the wife or husband of such person, to testify, shall not be made the subject of comment by the Judge or by counsel for the prosecution. (10)

As originally worded, the clause now forming the first paragraph of this section, 4, created a division of judicial opinion upon the

(1) Taken, with the important alteration here indicated in italics, from the first part of paragraph 1 of the old section 4.
(2) Infamous offences.
(3) Seduction, Procuring defilement, etc.
(4) Vagrancy.
(5) Neglect of duty to provide necessaries, etc.
(6) Rape, etc.
(7) Bigamy, etc.
(8) Abduction.
(9) Taken from the latter part of par. 1 of the old sec. 4.
(10) Taken from par. 2 of the old sec. 4.

question of whether an accused or his wife or her husband was thereby made a competent and compellable witness for the prosecution, or merely competent, if willing, to give evidence *for the defence;* and in 1903, it was decided in appeal by the Supreme Court of Canada, (one at least of the judges, however, strongly dissenting), that the accused and his wife or her husband were not only competent but compellable witnesses for the prosecution principally upon the ground that the section did not contain any limitation, as it might have done by stating that the accused and his wife or her husband should be competent witnesses *for the defence.* (11) But, in the clause in question, as now framed, these words *"for the defence"* are inserted.

Where the trial judge, in his charge to the jury, called attention to the fact that the prisoner, who was charged with theft, was not called to testify on his own behalf, and warned them that they were not to take that fact to his prejudice, but stated that, if the accused were innocent, he could have proved that he was not in the locality at the time, this was held to be a prohibited comment within the meaning of the last paragraph of the above section, 4, entitling the accused to a new trial. (12)

A direction to the jury upon a criminal trial that the accused has failed to account for a particular occurrence when the onus is upon him to do so, is not a comment upon the failure of the accused to testify. (13)

A statement by the Crown counsel, in his address to the jury, that the prisoner's counsel " took the very best and wisest course in not having the accused go on the witness stand," and that he, the Crown counsel, thinks it was wise for the prisoner himself, is a comment unfavorable to the accused on his failure to testify on his own behalf, and is within the prohibition contained in the above section. (14)

Where such prohibited comment has been made, upon the failure of the accused to testify, the same is a substantial wrong to the prisoner and entitles him to a new trial. (15)

The person "charged with an offence" is one actually on trial; and when two persons are jointly indicted but tried separately, the one not on trial is a competent witness, irrespective of this Act; and the provision contained in paragraph 5 of the above section does not prevent the judge from commenting on the failure to call him. (16)

(11) Gosselin v. R., 7 Can. Cr. Cas., 139.
(12) R. v. McGuire, 9 Can. Cr. Cas., 554; 36 N. B. R., 609.
(13) R. v. Abo, 11 B. C. R., 114; 8 Can. Cr. Cas., 453.
(14) R. v. King, 9 Can. Cr. Cas., 426.
(15) *Ib.*
(16) R. v. Blais, 11 Ont. L. R., 345.

An accused person examined as a witness on his own behalf, may be cross-examined as to whether he has been previously convicted of an indictable offence, whether or not the charge upon which he is being tried sets out the fact of a previous conviction, and although no evidence of good character had been adduced for the defence. The question is relevant to the issue as affecting the credibility of the accused as a witness. (17)

It has been held in England since the coming into force there of the Imperial *Criminal Evidence Act* 1898, that where one of two persons jointly charged gives evidence on his own behalf the other accused is entitled to cross-examine him. (18)

Sec. 5. Sec. 5. **Criminating Answers.** No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

2. If with respect to any question a witness objects to answer upon the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if, but for this Act, or the Act of any provincial legislature, the witness would therefore have been excused from answering such question, then, although the witness is by reason of this Act, or by reason of such provincial Act, compelled to answer, the answer so given shall not be used or receivable in evidence against him in any criminal trial, or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence. *Meaning unchanged.*

This section applies to the evidence of a party as well as to the evidence of an independant witness. (19)

The deposition of a judgment debter upon his examination as to means may be proved in evidence against him upon a criminal charge of disposing of property in fraud of creditors unless, at the time of the examination, he objected to answer on the ground that his answer might tend to criminate him. (20)

(17) R. v. D'Aoust, 5 Can. Cr. Cas., 407.

(18) Hackston v. Millar, 8 F. (Just. Cas.), 52; Mew's Ann. Dig. (1907), 30; R. v. Hadwen, [1902], 1 K. B., 882, approved.

(19) R. v. Fox, 18 Ont. P. R., 343.

(20) R. v. Van Meter, 11 Can. Cr. Cas., 207.

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Sec. 6.	Sec. 6. **Evidence of Mute.**	*Unchanged.*
	Sec. 7. **Expert witnesses.** Where, in any trial or other proceeding, criminal or civil, it is intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence, not more than five of such witnesses may be called upon either side without the leave of the court or judge or person presiding.	
	2. Such leave shall be applied for before the examination of any of the experts who may be examined without such leave.	*Added.*
	Sec. 8. **Comparison of disputed writing with genuine.** Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute. (21)	
	Sec. 9. **Contradicting a party's own witness when adverse.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but if the witness, in the opinion of the court, proves adverse, such party may contradict him by other evidence, or, by leave of the court, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. (22).	
	Sec. 10. **Cross-examination as to former written statements by witness.** Upon any trial a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject-matter of the	

(21) Taken from section 698 of the old Code.
(22) Taken from section 699 of the old Code.

case, *without such writing being shown to him;* Provided that if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and that the judge, at any time during the trial, may require the production of the writing for his inspection, and thereupon make such use of it for the purposes of the trial as he thinks fit.

2. A deposition of the witness, purporting to have been taken before a justice on the investigation of a criminal charge and to be signed by the witness and the justice, returned to and produced from the custody of the proper officer, shall be presumed *primâ facie* to have been signed by the witness. (23)

Sec. 11. **Cross-examination as to previous oral statements.**—If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness and he shall be asked whether or not he did make such statement. (24)

The party on whose behalf a witness is called, is not debarred from proving, by other witnesses, any relevant facts inconsistent with or contradictory of such witness' testimony, and, in such a case, a ruling that the witness is hostile to the party calling him is not necessary. (25)

The witness' deposition at the preliminary enquiry may be shewn to him, on his examination in chief at the trial,—for the purpose of refreshing his memory, but neither the examining counsel nor the witness may read the deposition aloud; and, on the witness having silently read his deposition taken at the pre-

(23) Taken from section 700 of the old Code.
(24) Taken from section 701 of the old Code.
(25) R. v. Laurin, (No. 5), 6 Can. Cr. Cas., 135.

liminary enquiry, the question,—put to the witness before shewing him his previous deposition and to which he had given an unexpected answer,—may be re-put to him; and only in case of the witness, after so refreshing his memory, persisting in the same unexpected answer, can the question be put to him in a leading form from the deposition. The opposite party is entitled, then, to cross-examine, not only upon the witness' examination in chief at the trial, but also upon the previous deposition shown to the witness for the purpose of refreshing his memory. (26)

Where, on the cross-examination of a witness, inadmissable matters are introduced whether volunteered by the witness or given in answer to questions put by the cross-examining counsel, the opposite party will be entitled to re-examine thereon, unless the cross-examining party applies to have the inadmissable evidence struck out. (27).

Sec. 12. **Questioning of witness as to whether he has been convicted of any offence.**—A witness may be questioned as to whether he has been convicted of any offence, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction.

2. The conviction may be proved by producing,—

(*a*) a certificate containing the substance and effect only, omitting the formal part, of the indictment and conviction, if it is for an indictable offence, or a copy of the summary conviction, if for an offence punishable upon summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court in which the conviction, if upon indictment, was had, or to which the conviction, if summary, was returned; and,

(*b*) proof of identity. (28)

The prosecution is not entitled to give evidence of the prisoner's bad character, unless or until the prisoner adduces evidence to

(26) *Ib.*
(27) R. v. Noel, 7 Can. Cr. Cas., 309; 6 Ont. L. R., 385.
(28) Taken from section 695 of the old Code.

prove his good character, either by examining his own witnesses on that point or by questioning the Crown witnesses thereon as a part of their cross-examination; and a new trial will be ordered where such evidence is wrongly admitted against the prisoner, although no objection was raised to it by the prisoner's counsel. (29)

Evidence to character can only be as to general reputation. Evidence of particular facts must be put out of consideration altogether; and rebutting evidence to meet evidence of good character brought forward by the accused must be of the same kind and kept within the same limits. (30)

Although the prosecution may not, — for the purpose of impeaching the character of its own witness, — adduce general evidence apart from facts relevant to the issue, evidence as to any fact, which is in issue upon the indictment, may be given although the effect of such evidence may be to contradict the testimony of a witness called by the same party, and may therefore tend to discredit such witness. (31)

Where the question of motive is an important element in the case, and the motive charged depends on the alleged improper relations of the accused with a certain female, evidence is admissible to prove such relations, although it tends to shew that he is of bad character, and notwithstanding the general rule which prevents the prosecution from adducing evidence of the general bad character of the accused as a circumstance in proof of the charge. (32)

Where evidence is adduced on behalf of the accused as to his general good character, the witnesses may be cross-examined by the prosecution as to the grounds of their belief, and as to the particular facts on the question of character of which they have knowledge (33)

Upon a charge of obtaining goods by false pretences evidence of other similar acts committed by the accused is not admissible in corroboration of the fact that he committed the act charged, but, upon due proof of the act charged, such evidence may be given in proof of criminal intent or of guilty knowledge. (34)

Evidence of other similar criminal acts may be relevant in a charge of theft, if such evidence bears upon the question whether the taking was designed or accidental. Where such evidence is relevant to the issue it is not necessary, to render it admissible, that it should establish conclusively that the accused had been

(29) R. v. Long, 5 Can. Cr. Cas., 493; R. v. Gibson, 18 Q. B. D., 537; R. v. Gadbury, 8 C. & P., 676.
(30) R. v. Rowton, 10 Cox C. C., 25; R. v. Triganzie, 15 Ont. R., 294.
(31) R. v. Hutchison, 8 Can. Cr. Cas., 486.
(32) R. v. Barsalou, 4 Can. Cr. Cas., 347.
(33) *Ib.*
(34) R. v. Komlensky, (No. 2), 7 Can. Cr. Cas., 27.

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guilty of such other criminal acts, but it will be received if it *tends* to shew that the accused had been so guilty. (35)

OATHS AND AFFIRMATIONS

Sec. 22.	Sec. 13.	**Who may administer Oaths.**	*Unchanged.*
Sec. 23.	Sec. 14.	**Affirmation instead of oath.**—If a person called or desiring to give evidence, objects, on grounds of conscientious scruples, to take an oath, or is objected to as incompetent to take an oath, such person may make the following affirmation:— 'I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth.' 2. Upon the person making such solemn affirmation, his evidence shall be taken and have the same effect as if taken under oath.	*Meaning unchanged.*
Sec. 24.	Sec. 15.	**Affirmation of a deponent making an affidavit or deposition. And effect of affirmation in regard to perjury.**	*Unchanged.*
Sec. 25.	Sec. 16.	**Evidence of Child.**—In any legal proceeding where a child of tender years is offered as a witness, and such child does not, in the opinion of the Judge, Justice or other presiding Officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the Judge, Justice or other presiding Officer, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. 2. No case shall be decided upon such evidence alone, and such evidence must be corroborated by some other material evidence.	*Slightly altered, as here set forth.*

JUDICIAL NOTICE.

Sec. 7.	Sec. 17.	**Imperial Acts, etc.**	*Unchanged.*
	Sec. 18.	**Acts of Canada.**—Judicial notice shall be taken of all public Acts of the Parliament of Canada without such Acts being specially pleaded.	*Added.*

(35) R. v. Collyns, 4 Can. Cr. Cas., 572.

DOCUMENTARY EVIDENCE.

Sec. 19. **Copies by King's Printer of Canadian Acts.**—Every copy of any Act of the Parliament of Canada, public or private, printed by the King's Printer, shall be evidence of such Act and of its contents; and every copy purporting to be printed by the King's Printer shall be deemed to be so printed, unless the contrary is shewn. *Added.*

Sec. 11. Sec. 20. **Imperial Proclamations, etc.**—Imperial Proclamations, Orders in Council, treaties, orders, warrants, licenses, certificates, rules, regulations, or other Imperial official records, acts or documents may be proved,—

(*a*) in the same manner as they may, from time to time, be provable in any court in England; or,

(*b*) by the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same or a notice thereof; or,

(*c*) by the production of a copy thereof purporting to be printed by the King's Printer for Canada. *Altered, in arrangement only.*

Sec. 3. Sec. 21. **Proof of Proclamations, etc., of Governor General.** *Unchanged.*

Sec. 9. Sec. 22. **Proof of Proclamations, etc., of a lieutenant-governor, etc., of a province.**—Evidence of any proclamation, order, regulation or appointment made or issued by a lieutenant-governor or lieutenant-governor in council of any province, or by or under the authority of any member of the executive council, being the head of any department of the government of the province, may be given in all or any of the modes following, that is to say,—

(*a*) By the production of a copy of the official gazette for the province, purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof;

(*b*) By the production of a copy of such proclamation, order, regulation or ap-

pointment, purporting to be printed by the government or King's printer for the province;

(c) By the production of a copy or extract of such proclamation, order, regulation or appointment, purporting to be certified to be true by the clerk or assistant or acting clerk of the executive council, or by the head of any department of the government of a province, or by his deputy or acting deputy as the case may be.

2. *Prima facie* evidence of any proclamation, order, regulation or appointment made by the lieutenant-governor or lieutenant-governor in council of the Northwest Territories, as constituted previously to the first day of September, one thousand nine hundred and five, or of the commissioner in council of the Northwest Territories as now constituted, or of the commissioner in council of the Yukon Territory, may also be given by the production of a copy of the *Canada Gazette* purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof.

Altered, as here set forth.

Sec. 10. Sec. 23. **Evidence of judicial proceedings, etc.**—Evidence of any proceeding or record whatsoever of, in, or before any court in the United Kingdom, or the Supreme or Exchequer Courts of Canada, or any court in any province of Canada, or any court in any British Colony or possession or any Court of record of the United States of America, or of any state of the United States of America, or of any other foreign country, or before any justice of the peace or coroner in any province of Canada, may be made in any action or proceeding by an exemplification or certified copy thereof, purporting to be under the seal of such court, or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal or of the signature of such justice or coroner, or other proof whatever.

2. If any such court, justice or coroner has

no seal, or so certifies, such evidence may be made by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court or of such justice or coroner without any proof of the authenticity of such signature or other proof whatsoever.

Slightly altered, as here set forth.

Sec. 12. Sec. 24. **Copies of Official documents of Canada, or of a province or of a municipality.**—In every case in which the original record could be received in evidence,—

(*a*) a copy of any official or public document of Canada or of any province, purporting to be certified under the hand of the proper officer or person in whose custody such official or public document is placed; or,

(*b*) a copy of a document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any municipal or other corporation, created by charter or statute of Canada or of any province, purporting to be certified under the seal of the corporation, and the hand of the presiding officer, clerk or secretary thereof,

shall be receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof.

Altered, in arrangement, only.

Sec. 13. Sec. 25. **Copies of or extracts from books and documents of a public nature.** *Unchanged.*

Sec. 17. Sec. 26. **Copies of entries in Canadian Government books.** *Unchanged.*

Sec. 18. Sec. 27. **Certified copies of notarial acts in Quebec.** *Unchanged.*

Sec. 19. Sec. 28. **Notice to adverse party of intended production of a copy of a book or document.**—No copy of any book or other document shall be received in evidence, under the authority of any of the last five preceding sections, upon any trial, unless the party intending to produce

the same has before the trial given to the party against whom it is intended to be produced reasonable notice of such intention.

2. The reasonableness of the notice shall be determined by the court or judge, but the notice shall not in any case be less than ten days. *Meaning unchanged.*

This section does not apply on a criminal trial to proof of births, deaths, and marriages by extracts from the registers of acts of civil status in the Province of Quebec. (36)

Sec. 15. Sec. **29. Order signed by Secretary of State.** *Unchanged.*

Sec. 16. Sec. **30. Copies of documents printed in Canada Gazette.** *Unchanged.*

Sec. 14. Sec. **31. Proof of handwriting of person certifying not required.** *Unchanged.*

Sec. **32. Proof of attested instrument.**—It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite.

2. Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto. (37)

Sec. **33. Impounding forged instrument admitted in evidence.**—Whenever any instrument which has been forged, or fraudulently altered is admitted in evidence, the court or the judge or person who admits the instrument may, at the request of any person against whom it is admitted in evidence, direct that the instrument shall be impounded and be kept in the custody of some officer of the court or other proper person for such period and subject to such conditions, as to the court, judge or person admitting the instrument seems meet. (38)

Sec. 20. Sec. **34. Construction of this Act.** *Unchanged.*

PROVINCIAL LAWS OF EVIDENCE.

Sec, 21. Sec. **35. How applicable.** *Unchanged.*

STATUTORY DECLARATIONS.

Sec. 26. Sec. **36. Solemn declaration.** — Any judge, notary public, justice of the peace, police or stipendiary

(36) R. v. Long, 5 Can. Cr. Cas., 493.
(37) Taken from sec. 696 of the old Criminal Code.
(38) Taken from sec. 720 of the old Criminal Code.

magistrate, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or dominion courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the same before him, in the form following, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact or of any account rendered in writing:—

I, A. B., do solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of *The Canada Evidence Act*.

Declared before me
at this day of

A. D. 19

INSURANCE PROOFS.

Sec. 27. Sec. 37. **Affidavits, etc., may be made before a commissioner.** *Meaning unchanged.*

PART II.

APPLICATION.

Sec. **38.** This Part applies to the taking of evidence relating to proceedings in courts out of Canada. *Added.*

INTERPRETATION.

Sec. **39. Definitions.**—In this Part, unless the context otherwise requires,—

(*a*) 'court' means and includes the Supreme Court of Canada, and any superior court in any province of Canada;

(*b*) 'judge' means and includes any judge of the Supreme Court of Canada and any judge of any superior court in any province of Canada;

(*c*) 'cause' includes a proceeding against a criminal;

(*d*) 'oath' includes affirmation in cases in

which by the law of Canada, or of the province, as the case may be, an affirmation is allowed instead of an oath. *Added*

Sec. 40. **Construction.**—This Part shall not be so construed as to interfere with the right of legislation of the Legislature of any province requisite or desirable for the carrying out of the objects hereof. *Added.*

PROCEDURE.

Sec. 41. **Order for examination in Canada of a witness in relation to a suit in any other of His Majesty's dominions or in any foreign country.**—Whenever, upon an application for that purpose, it is made to appear to any court or judge, that any court or tribunal of competent jurisdiction, in any other of His Majesty's dominions, or in any foreign country, before which any civil, commercial or criminal matter is pending, is desirous of obtaining the testimony in relation to such matter, of any party or witness within the jurisdiction of such first mentioned court, or of the court to which such judge belongs, or of such judge, such court or judge may, in its or his discretion, order the examination upon oath upon interrogatories, or otherwise, before any person or persons named in such order, of such party or witness accordingly, and by the same or any subsequent order may command the attendance of such party or witness for the purpose of being examined, and for the production of any writings or other documents mentioned in such order, and of any other writings or documents relating to the matter in question that are in the possession or power of such party or witness. *Added.*

Sec. 42. **Enforcement of order.**—Upon the service upon such party or witness of such order, and of an appointment of a time and place for the examination of such party or witness signed by the person named in such order for taking the same, or, if more than one person is named, then by one of the persons named, and

upon payment or tender of the like conduct money as is properly payable upon attendance at a trial, such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge. *Added.*

Sec. 43. Every person whose attendance is required in manner aforesaid shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial. *Added.*

Sec. 44. Upon any examination of parties or witnesses, under the authority of any order made in pursuance of this Part, the oath shall be administered by the person authorized to take the examination, or, if more than one, then by one of such persons. *Added.*

Sec. 45. Any person examined under any order made under this Part shall have the like right to refuse to answer questions tending to criminate himself, or other questions, as a party or witness, as the case may be, would have in any cause pending in the court by which, or by a judge whereof, such order is made.

2. No person shall be compelled to produce, under any such order, any writing or other document that he could not be compelled to produce at a trial of such a cause. *Added.*

Sec. 46. **Court may make rules for carrying this Part into effect.**—The court may frame rules and orders in relation to procedure, to the evidence to be produced in support of the application for an order for examination of parties and witnesses under this Part, and generally for carrying this Part into effect.

2. In the absence of any order in relation to such evidence, letters rogatory from any court of justice in any other of the dominions of His Majesty, or from any foreign tribunal, in which such civil, commercial or criminal matter is pending, shall be deemed and taken to be sufficient evidence in support of such application. *Added.*

APPENDIX

THE ALIEN LABOR ACT. (1)

(R. S., 1906, c. 97).

Sec. **1. Short Title.**—This Act may be cited as the Alien Labor Act. *Added.*

Sec. 1. Sec. **2. Importation of foreign labor prohibited.**—It shall be unlawful for any person company, partnership or corporation, in any manner to prepay the transportation, or in any way to assist, encourage or solicit the importation, or immigration of any alien or foreigner into Canada, under contract or agreement, parole or special, express or implied, made previous to the importation or immigration of such alien or foreigner, to perform labour or service of any kind in Canada. *Meaning unchanged.*

Sec. 3. Sec. **3. Penalty for infringement of prohibition.**—For every violation of the last preceding section, the person, partnership, company or corporation violating it by knowingly assisting, encouraging or soliciting the immigration or importation of any alien or foreigner into Canada to perform labour or service of any kind under contract or agreement, express or implied, parole or special, with such alien or foreigner, previous to his becoming a resident in or a citizen of Canada, shall forfeit and pay a sum not exceeding one thousand dollars, nor less than fifty dollars.

Slightly altered. (2)

As the offence is that of knowingly assisting, etc., the immigration or importation of any alien or foreigner into Canada to perform labor, etc., a conviction which does not recite that the alleged offence was done *knowingly,* is bad, *as not disclosing* an offence known to the law. (3)

Sec. 3. Sec. **4. Recovery of penalty by civil action.**

Unchanged. (2)

(1) See pages 1063-5 of the Author's second edition of the Criminal Code for the old Act.

(2) These four new sections, 3, 4, 5 and 6, are taken from section 3 of the old Allen Labor Act.

(3) R. v. Hayes, 6 Can. Cr. Cas., 357.

THE ALIEN LABOR ACT.—*Continued.*

Sec. 3. Sec. 5. **Recovery of penalty upon summary conviction.**—Such sum may also, with the written consent, to be obtained *ex parte*, of the Attorney General of the province in which the prosecution is had, or of a judge of a superior or county court, be recovered upon summary conviction before any judge of a county court (being a justice of the peace), or any judge of the sessions of the peace, recorder, police magistrate, or stipendiary magistrate, or any functionary, tribunal, or person invested, by the proper legislative authority, with power to do alone such acts as are usually required to be done by two or more justices of the peace, and when recovered shall be paid to the Minister of Finance. *Unchanged.* (3*a*)

The purpose of requiring the consent of a judge to a summary prosecution under this Act is to prevent frivolous complaints, and the consent must therefore contain a general statement of the offence alleged, the name of the person in respect of whom the offence is alleged to have been committed and the time and place with sufficient certainty to identify the particular offence intended to be charged. A consent signed by a judge and which is in general terms, specifying merely the person accused but not otherwise identifying the offence charged under the Act is not sufficient to confer jurisdiction upon a magistrate and a summary conviction founded upon such general consent must be quashed. (4)

Sec. 3. Sec. 6. **Separate proceedings for each alien.** *Unchanged.* (3*a*)

Sec. 2. Sec. 7. **Certain contracts, with aliens for services, void.** *Unchanged.*

Sec. 4. Sec. 8. **Punishment of master of vessel knowingly bringing such aliens as aforesaid to Canada.** *Unchanged*

Sec. 5. Sec. 9. **Exceptions or exemptions.** *Meaning unchanged.*

Sec. 6. Sec. 10. **Return, — to the country whence he came, — of an immigrant landed in contravention of the Act.** *Meaning unchanged.*

It was held that the expression, "returned to the country whence he came," intends the actual depositing, on foreign soil, of the

(3*a*) These four new sections, 3, 4, 5 and 6, are taken from section 3 of the old *Alien Labor Act*.

(4) R. v. Breckenridge, 10 Can. Cr. Cas., 180; 10 Ont. L. R., 459.

alien who is in custody for deportation, and that the extra-territorial constraint thereby assumed is beyond the power of the Dominion Parliament to authorize, that the language necessitates not simply the prisoners' conveyance to the boundary, but their arrival on foreign soil, and that the custody of the prisoners from then until their release was consequently invalid, and their discharge was ordered. (5)

But this holding has been recently reversed by the Privy Council, which decided that the Crown undoubtedly possesses the power to expel an alien from Canada or to deport him to the country whence he came, that the *Alien Labor Act*, assented to by the Crown, delegated to the Dominion Government that power and that the fact that extra-territorial constraint must be exercised in effecting the expulsion does not invalidate the warrant authorizing the same. (6)

Sec. 7. Sec. 11. **Share of penalty may be paid to informer by the Minister of Finance.** (7)

Sec. 8. Sec. 12. **Advertising for foreign labor deemed a violation of the Act.**—It shall be deemed a violation of this Act for any person, partnership, company or corporation to assist or encourage the importation or immigration of any person who resides in or is a citizen of any foreign country to which this Act applies, by promise of employment through advertisements printed or published in such foreign country. *Slightly changed, as here set forth.*

2. Advertisements, resulting in the coming of such aliens, deemed contracts.—Any such person coming to this country in consequence of such an advertisement shall be treated as coming under a contract as contemplated by this Act, and the penalties by this Act imposed shall be applicable in such case; Provided that this section shall not apply to skilled labor not obtainable in Canada, as hereinbefore specified.

The usual manufacturer's advertisement of "Mechanics' wanted" is only an invitation to apply for employment and not a

(5) *In re* Gibbula and Cain, 41 C. L. J., 573; 10 Ont. L. R., 469.

(6) Attorney General of Canada v. Gibbula, and Same v. Cain, [1906], A. C., 542; 75 L. J. P. C., 81.

(7) Changed by substituting "Minister of Finance" for "Receiver General."

"promise of employment," the advertising of which is prohibited by the Alien Labor Statutes. (8)

Where, upon a prosecution, under Alien Labor Statutes, it appears that, although the workman was born in the United States, his father was born in Canada, and no evidence is given that either the workman or his father became United States citizens by naturalization, it is to be inferred that the workman is a British subject and not an alien. (9)

Sec. 9. Sec. **13. Application of Act. Reciprocity.** *Unchanged*
Sec. 9. Sec. **14. Evidence of foreign law.** *Unchanged.*
Sec. **15. Powers of Dominion and Provincial Governments as to immigration saved.** *Added.*

A judge of a county court, in New Brunswick, has no jurisdiction to convict for an offence under the law against the importation and employment of aliens, when such offence is not committed within his territorial jurisdiction. (10).

DEMISE OF THE CROWN ACT.

(R. S., 1906, c. 101).

Sec. **1. Short Title.** — *Demise of the Crown Act.*
Sec. **2. Government commissions to judges and others not affected by Demise of the Crown. Governor General's proclamation authorizing continuance.**
Sec. **3. Validity of acts done between demise and Governor General's proclamation.**
Sec. **4. Rights and prerogatives of the Crown saved.**
Sec. **5. Judicial proceedings preserved.**

VICTORIA DAY ACT.

(R. S., 1906, c. 107).

Sec. **1. Short Title.** *Victoria Day Act.*
Sec. **2. Victoria Day (24th May of every year) a holiday. —**
Sec. **3. When 24th May is a Sunday, the 25th of May shall be a holiday.**

THE MONEY-LENDERS ACT.

(R. S., 1906, c. 122).

Sec. **1. Short Title.** — *The Money-Lenders Act.*
Sec. **2. Definition.** — 'Money-lender' in this Act includes any person who carries on the business of money-lending, or

(8) Downie v. Vancouver Engineering Works, 8 Can. Cr. Cas., 66.
(9) R. v. Hayes, *supra.*
(10) R. v. Forbes, 37 N. B. R., 402; Can. Ann. Dig., (1906), 1.

MONEY LENDERS' ACT.—*Continued.*

advertises, or announces himself, or holds himself out in any way, as carrying on that business, and who makes a practice of lending money at a higher rate than ten per centum per annum, but does not comprise registered pawn brokers as such.

Sec. 3. **Not applicable to Yukon.** — This Act shall not apply to the Yukon Territory.

Sec. 4. **Limitation as to small loans.** — This Act shall not apply to any loan or transaction in which the whole interest or discount charged or collected in connection therewith does not exceed the sum of fifty cents.

Sec. 5. **Act not to increase existing rate of interest.** — Nothing in this Act shall operate to increase the rate of interest that may be recovered in any case where by law the rate is fixed at less than twelve per centum per annum.

Sec. 6. **Interest limited to twelve per cent. per annum.** — Notwithstanding the provisions of the Interest Act, no money-lender shall stipulate for, allow or exact on any negotiable instrument, contract or agreement, concerning a loan of money, the principal of which is under five hundred dollars, a rate of interest or discount greater than twelve per centum per annum; and the said rate of interest shall be reduced to the rate of five per centum per annum from the date of judgment in any suit, action or other proceeding for the recovery of the amount due.

Sec. 7. **Power of enquiry by court, and relief of debtor.** — In any suit, action or other proceeding concerning a loan of money by a money-lender the principal of which was originally under five hundred dollars, wherein it is alleged that the amount of interest paid or claimed exceeds the rate of twelve per centum per annum, including the charges for discount, commission, expenses, inquiries, fines, bonus, renewals, or any other charges, but not including taxable conveyancing charges, the court may re-open the transaction and take an account between the parties, and may, notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, re-open any account already taken between the parties, and relieve the person under obligation to pay from payment of any sum in excess of the said rate of interest; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it, and may set aside, either wholly or in part, or revise, or alter, any security given in respect of the transaction.

MONEY LENDERS' ACT.—*Continued.*

Sec. 8. **Exception in case of bona fide holder of a negotiable instrument.** — The *bona fide* holder, before maturity, of a negotiable instrument discounted by a preceding holder at a rate of interest exceeding that authorized by this Act, may nevertheless recover the amount thereof, but the party discharging such instrument may reclaim from the money-lender any amount paid thereon for interest or discount in excess of the amount allowed by this Act.

Sec. 9. **Existing contracts and existing judgments.** — The principal of any sum of money, originally under five hundred dollars, due and payable before the thirteenth day of July, one thousand nine hundred and six, in virtue of any negotiable instrument given to a money-lender, or of any contract or agreement entered into with such money-lender in respect of money lent by him, shall not, from and after the said date, bear a rate of interest greater than twelve per centum per annum; and from and after the said date no rate of interest greater than five per centum per annum shall be recovered upon any judgment, rendered before the said date, upon any such negotiable instrument, contract or agreement for the payment of money lent by a money-lender, and which allows a greater rate than five per centum per annum.

Sec. 10. **Unmatured instruments and contracts.** — In the case of any such negotiable instrument made before the thirteenth day of July, one thousand nine hundred and six, and maturing after the said date, and in the case of any such contract or agreement made before the said date and to be performed thereafter, the foregoing provisions of this Act shall apply only from the date of maturity or performance, as the case may be.

Sec. 11. **Penalty.** — Every money-lender is guilty of an indictable offence and liable to imprisonment for a term not exceeding one year, or to a penalty not exceeding one thousand dollars, who lends money at a rate of interest greater than that authorized by this Act.

THE ADULTERATION ACT.

(R. S., 1906, c. 133)

INTERPRETATION.

Sec. 2. Sec. 2. **Definitions.** — In this Act, unless the context otherwise requires,—

(*a*) 'Minister' means the Minister of Inland Revenue. *Added.*

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(*a*)	(*b*) 'food' meaning of.	*Unchanged.*
(*b*)	(*c*) 'drug' meaning of.	*Unchanged.*
(*c*)	(*d*) 'agricultural fertilizer,' meaning of.	*Unchanged.*
(*d*)	(*e*) 'officer,' meaning of.	*Unchanged.*
(*i*)	(*f*) 'analyst,' meaning of.	*Unchanged.*

Sec. 2 (*e*) Sec. 3. **Adulterated Food.** — Food shall be deemed to be adulterated within the meaning of this Act,

(*a*) if any substance has been mixed with it so as to reduce or lower or injuriously affect its quality or strength;

(*b*) if any inferior or cheaper substance has been substituted wholly or in part for the article;

(*c*) if any valuable constituent of the article has been wholly or in part abstracted;

(*d*) if it is an imitation of or is sold under the name of another article;

(*e*) if it consists wholly or in part of a diseased or decomposed or putrid or rotten animal or vegetable substance, whether manufactured or not;

(*f*) if it contains any added poisonous ingredient or any ingredient which may render such an article injurious to the health of persons or cattle consuming it;

(*g*) if its strength or purity falls below the standard, or its constituents are present in quantity not within the limits of variability fixed by the Governor in Council as hereinafter provided;

(*h*) if it is so coloured or coated or polished or powdered that damage is concealed, or if it is made to appear better or of greater value than it really is;

(*i*) in the case of milk or butter, if it is the produce of a diseased animal or of an animal fed upon unwholesome food.

Slightly altered in the wording.

It has been held in England that where a purchaser asks only for "milk," no offence is committed by selling skimmed milk. (11) But see section 23, *post*, of our Act, which provides that cans in

(11) Lane v. Collins, 54 L. J. M. C., 76.

which skimmed milk is sold must bear on their exterior the word *Skimmed* in letters of not less than two inches in length and be served in measures similarly marked.

The physical condition of the milk supplied is the test, irrespective of the intent. (12)

Sec. 15. Sec. 16. Sec. 17. **4. Articles adulterated so as to be injurious to health.** — The following articles sold, offered or exposed for sale shall be deemed to have been adulterated in a manner injurious to health:—

(*a*) Milk, after any valuable constituent of the article has been abstracted therefrom, or water added thereto, or when it is the product of a diseased animal, or of an animal fed upon unwholesome food;

(*b*) Vinegar, if any mineral acid or any soluble salt having copper or lead as its base has been added thereto, either during the process of manufacture or subsequently;

(*c*) Alcoholic, fermented or other potable liquors containing any of the articles mentioned in the first schedule to this Act, or any article hereafter added thereto by the Governor in Council.

Sec. 21 (*a*) Sec. **5. Adulteration of Honey.** — Feeding bees with sugar, except for the purpose of being consumed by them as food, or with glucose or any sweet substance other than such bees gather from natural sources, with the intent that the same shall be used by the bees in the making of honey, or, excepting as aforesaid, the exposing of any such substance with such intent, shall be deemed a wilful adulteration of honey within the meaning of this Act.

Slightly changed in the wording.

Sec. 2. Sec. " (*h*) **6. Adulterated agricultural fertilizer.** — Every agricultural fertilizer sold, offered or exposed for sale shall be deemed to be adulterated within the meaning of this Act,—

(*a*) if the chemical analysis thereof shows a deficiency of more than one per centum of any of the chemical substances the

(12) R. v. McIntosh, 33 C. L. J., 240.

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percentages whereof are to be specified in the certificate required by the Fertilizers Act to be produced to the inspector if the agricultural fertilizer is in bulk, or, if not in bulk, required to be affixed to each barrel, box, sack or package containing any such fertilizer; or,

(*b*) if it contains less than the minimum percentage of such substances required by the said Act to be contained in such fertilizer. *Altered, as here set forth.*

The new *Fertilizers Act* is R. S., 1906, c. 132.

Sec. 2 (*f*) Sec. 7. **Adulterated Drugs.** — Every drug shall be deemed to be adulterated within the meaning of this Act if its strength, quality or purity falls below the professed standard under which it is sold, or if, when offered or exposed for sale under or by a name,—

(*a*) recognized in the edition of 1898 of the British Pharmacopœia; or,

(*b*) recognized in any foreign pharmacopœia, such as *Le Codex Medicamentarius* in France, or the Pharmacopœia of the United States, with the name of such pharmacopœia plainly labelled upon it; or,

(*c*) which is not recognized in any pharmacopœia, but is found in some generally recognized standard work on *materia medica* or chemistry;

it differs from the standard of strength, quality or purity laid down therein.

ANALYSIS.

Appointment of analysts, examiners and inspectors. — Sections 8, 9, 10, 11, 12 and 13, contain provisions for the appointment of analysts of food, drugs, agricultural fertilizers, etc., and for the appointment of food examiners and for the appointment of inspectors of samples of food, drugs or agricultural fertilizers suspected to be adulterated; and sections 14 to 19 relate to the method of obtaining and analysing samples of food, etc.

ADULTERATION.

Sec. 14. Sec. 20. **General Prohibition against Adulteration.**

13 *Unchanged.*

Sec. **21.** **False marking.** — No person shall mark, brand or label any article or any package containing any article mentioned in the first column of the fourth schedule to this Act, with the word *Pure, Genuine,* or any word equivalent thereto, or sell or offer or expose for sale, any such article or package so marked, branded, stamped or labelled, unless such article or the contents of such package are pure within the meaning of the second column of the said schedule. (13)

Sec. **22.** **Illegal sale.** — No person shall sell, or offer or expose for sale, any article or any substance for domestic use under the name or designation contained in the first column of the fifth schedule to this Act, unless such article or substance is free from adulteration or admixture of foreign matter and unless it possesses the composition and distinguishing characteristics stated in the second column of the said schedule. (14)

Sec. 15. Sec. **23.** **Skim milk.** — Milk from which the cream has been removed by skimming, or by a separator or creamer, may be sold as skim milk, if contained in cans bearing upon their exterior the word *Skimmed* in letters of not less than two inches in length and served in measures also similarly marked: Provided that any person supplying such skim milk, unless such quality of milk has been asked for by the purchaser shall not be protected by this section from any prosecution on account of any violation of this Act.

Sec. 2 (*g*) Sec. **24.** **Exceptions, with regard to additions of uninjurious ingredients to food or drugs, as to mixtures, patent medicines, compounds, etc.** *Altered in wording, but not in meaning.*

Sec. 18. } Sec. **25** } **Exemptions; and standards of quality.** —
Sec. 19. } Sec. **26** } These two sections provide that the Governor in Council may, by orders in Council, published in the *Canada Gazette,* declare from time to time that certain articles or

(13) Taken from the 57-58 Vic., c. 37, sec. 1.
(14) Taken from the 57-58 Vic., c. 37, sec. 2.

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preparations be exempt from the provisions of the Act, and may add to the first schedule, and shall also, from time to time, establish a standard of quality for and fix the limits of the variability permissible in any article of food or drug or compound the standard of which is not established by any such pharmacopœia or standard work as in the Act previously mentioned.

Sec. **27.** **Power to add to and remove from the fourth and fifth schedules to the Act.** — This section empowers the Governor General, by Orders in Council to add any articles to the fourth and fifth schedules to the Act and to determine the standard of purity therefor, and to also remove any articles from the said schedules. (*Taken from the 57-58 Vic., c. 37, sec. 4*).

Sec. 20. Sec. **28.** **Seizure and confiscation of Adulterated.**
Sec. 21. Sec. **29.** **Articles.** *Unchanged.*

Sec. 21*a*. Sec. **30.** **Honey.** — This section provides that except for the exclusive purpose of consumption as food, bees shall not be fed on sugar, etc., and that no honey made by bees therefrom and no imitation of honey or sugar honey so called or other substitute for honey shall be manufactured or produced for sale or sold or offered for sale in Canada.

OFFENCES AND PENALTIES.

Sec. 22. Sec. **31.** **Punishment for wilful adulteration, when the adulteration is injurious to health; and when it is not injurious to health.** *Unchanged.*

Sec. 23. Sec. **32.** **Punishment for selling or exposing for sale any adulterated article.** *Unchanged.*

Sec. " Sec. **33.** **Want of knowledge, on part of seller, of the adulteration of the article, the seller having purchased it as an article of same nature and quality as demanded of him by purchaser or inspector, with a warranty to that effect.** *Unchanged.*

Sec. " Sec. **34.** **Calling in third party from whom seller purchased.** *Unchanged.*

A company by a *written* contract agreed to buy pure new milk

with all its cream each churn to bear a *written* warranty. To each churn was attached a label "Warranted pure milk with all its cream delivered under contract." The company also agreed *verbally* to buy milk and that a written warranty should be given with each consignment. To a churn delivered under this agreement was attached a label, "Warranted pure milk with all its cream." Prosecutions for selling milk not of the nature substance and quality demanded by the purchaser, having been instituted, under the English Act, notice was given, in accordance with the Act, and copies of the labels were enclosed. *Held* that the requirements of the Act had been complied with, and the company was discharged from the prosecutions. (15)

It is not necessary that there should be a specific written warranty with each consignment of milk delivered under a contract. A general warranty in writing that future deliveries of milk shall be "new, unadulterated, and with all its cream on," protects the retail dealer. The connection between the milk delivered under such a warranty and that which may subsequently be the subject matter of an alleged offence may be established by evidence. (16)

Sec. **35. Penalty for refusing access to officer.** (17)

Sec. 24. Sec. **36. Penalty for possessing adulterated liquors.** *Unchanged.*

Sec. 25. Sec. **37. Penalty for knowingly attaching false labels.** *Unchanged.*

Sec. **38. False marking.** *Taken from* 57-58 *V., c.* 37, *ss.* 1, 3.

GENERAL.

Sec. 27. Sec. **41. Duty of officers.** *Unchanged.*

Sec. 27*a*. Sec. **42. Any person may proceed for adulteration.** *Unchanged.*

Sec. " Sec. **43. Duty of public analyst.** *Unchanged.*

Sec. 27*b*. Sec. **44. Division of article by purchaser for purpose of analysis.** *Meaning unchanged.*

Each of the three parts into which, an article, purchased for analysis, is to be divided, must be sufficient in quantity to afford reasonable facilities for the purpose of analysis. (18)

An inspector purchased four penny packets of cream of tartar all bearing similar labels, and, — having mixed all the contents

(15) Irving v. Callow Park Dairy Co., 20 Cox C. C., 295.
(16) Elliott v. Pilcher, [1901], 2 K. B., 817.
(17) Taken from 57-58 Vic., c. 37, sec. 5.
(18) Lowery v. Hallard, 75 L. J. K. B., 249; [1906], 1 K. B., 398.

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together, — divided them into three parts, one of which parts he delivered to the seller, another he retained, and the third he sent to the county analyst for analysis. *Held* that there had been a sufficient compliance with the requirements of the English Act and that it was not necessary that any single package should have been divided into three parts. (19)

Sec. 27.	Sec. 45.	**Division by analyst.**	*Unchanged.*
Sec. 28.	Sec. 46.	**Expenses.**	*Unchanged.*
Sec. "	Sec. 47.	**Counsel fee. Costs of defence if prosecution dismissed.**	*Unchanged.*
Sec. 29.	Sec. 48.	**Regulations.**	*Unchanged.*
Sec. 30.	Sec. 49.	**Provisions of Inland Revenue Act to apply**	
Sec. "	Sec. 50.	**to this Act.**	
Sec. 31.	Sec. 51.	**Proceeding by indictment.** —	*Unchanged.*

SCHEDULES.

First schedule.—Injurious articles. — *Unchanged.*

Second schedule.—Expenses of analysis. — *Unchanged.*

Third schedule.—Form of warranty. — *Unchanged.*

Fourth schedule. —

1	2
Dry white lead....	Basic carbonate of lead prepared by corrosion of metallic lead.
White lead in oil..	Dry white lead ground in pure linseed oil in the proportion of 90 to 92 per centum of the former to 8 to 10 per centum of the latter.

(19) Smith v. Savage, [1905], 2 K. B., 88; (Mason v. Cowdary, 69 L. J. Q. B., 666, distinguished).

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Fifth schedule. —

1	2
Paris green.....	An insecticide containing at least fifty per centum of arsenious acid and at least thirty per centum of cupric oxide and being completely soluble in aqueous ammonia.
Vinegar	A more or less coloured liquid, consisting essentially of impure dilute acetic acid obtained by the oxidation of wine, beer, cider or other alcoholic liquid.

THE CANNED GOODS ACT.

	Sec. 1. **Short Title.** — This Act may be cited as the *Canned Goods Act.* —	*Added.*
Sec. 1.	Sec. 2. **Definition of package.** —	*Unchanged.*
Sec. 2.	Sec. 3. **Name and address of packer to be stamped on package.** —	*Unchanged.*
Sec. "	Sec. 4. **Word "soaked" to be printed.**	*Unchanged.*
Sec. "	Sec. 5. **Penalty for selling goods not labelled.**—	*Meaning unchanged.*
Sec. 3.	Sec. 6. **Penalty for misrepresentation of contents of package.**	*Meaning unchanged.*
Sec. 4.	Sec. 7. **Misrepresentation of date of packing.—Packing.**	*Unchanged.*

DAIRY PRODUCTS.

There is, — at pages 191 to 193 of the Author's second edition of the Criminal Code, — a summary of some of the provisions of the old statutes relating to **dairy products**, including the **Sale of milk** to **Cheese Butter and Condensed Milk Makers**, the making and sale of **skim-milk cheese**, the **Registration of Cheese Factories and Creameries**, the sale of **Canadian Butter and Cheese**, and the prohibition against the **manufacture** and **sale** of **oleomargarine** and **butterine.**

These and other provisions on the same subject are now consolidated in Part VIII (consisting of sections 279-318) of the *Inspection and Sale Act*, (R. S., 1903, c. 85).

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FRUIT AND FRUIT MARKS.

The provisions of the old statutes relating to this subject are now consolidated in Part IX (consisting of sections 319-336) of the *Inspection and Sale Act*, (R. S., 1906, c. 85).

It is an offence against the *Fruit Marks' Act*, to have in possession, for sale, apples packed so that more than fifteen per cent. of the contents of the barrel is substantially inferior in grade to the faced surface, although the sale actually made was to a purchaser who inspected the bulk, and, consequently, was not defrauded, — it not being essential to the offence that there should be a fraudulent intent on the part of the accused; and the offence is complete, although the accused neither knew of the fraudulent packing nor was negligently ignorant of it. (20)

THE FERTILIZERS ACT. (21)

The provisions of the old *Fertilizers Act*, (53 Vic., c. 24), are now contained in the new *Fertilizers Act*, (R. S., 1906, c. 132).

IDENTIFICATION OF CRIMINALS ACT. (21*a*)

Sec. **1. Short Title.** This Act may be cited as the Identification of Criminals Act. *Added.*

Sec. 1. Sec. **2. Bertillon Signaletic System.**— *Unchanged.*

Sec. 2. Sec. **3. No liability for acting under the Act.** *Unchanged.*

THE TICKET OF LEAVE ACT. (22)

[R. S., 1906, c. 150].

Sec. **1. Short Title.** This Act may be cited as the Ticket of Leave Act. *Added.*

TICKET OF LEAVE.

Sec. 1. Sec. **2. Granting of License to convicts; and revocation or alteration of same.** — The Governor General by an order in writing under the hand and seal of the Secretary of State may grant to any convict, under sentence of imprisonment in a penitentiary, gaol or other public or reformatory

(20) R. v. James, 6 Can. Cr. Cas., 159.

(21) The main provisions of the old *Fertilizers Act* are set out at page 192 of the Author's 2nd. Edition of the Criminal Code.

(21*a*) See page 744 of the Author's second edition.

(22) For the provisions of the old Act, see pp. 997 to 1002 of the Author's second edition.

THE TICKET OF LEAVE ACT.—*Continued.*

prison, a license to be at large in Canada, or in such part thereof as in such license shall be mentioned, during such portion of his term of imprisonment and upon conditions in all respects as to the Governor General may seem fit.

2. The Governor General may from time to time revoke or alter such license by a like order in writing. *Altered, as here set forth.*

Sec. 2. Sec. 3. **Sentence deemed to continue, although the execution thereof is suspended.** — The conviction and sentence of any convict to whom a license is granted under this Act shall be deemed to continue in force while such license remains unforfeited and unrevoked, although execution thereof is suspended; but so long as such license continues in force and unrevoked or unforfeited, such convict shall not be liable to be imprisoned by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license. *Slightly altered.*

Sec. 10.

Sec. 4. Sec. **4. Form of License.—Deposit of conditions before Parliament.** *Unchanged.*

REVOCATION AND FORFEITURE.

Sec. 5. Sec. **5. Forfeiture of license if holder convicted of an indictable offence.** *Unchanged.*

Sec. 9. Sec. **6. Certificate of summary conviction of license holder to be forwarded to Secretary of State.** *Unchanged.*

Sec. 3. Sec. **7. Action upon revocation or forfeiture.**—If any such license is revoked or forfeited, it shall be lawful for the Governor General by warrant under the hand and seal of the Secretary of State to signify to the Commissioner of Dominion Police at Ottawa that such license has been revoked or forfeited, and to require the Commissioner to issue his warrant under his hand and seal for the apprehension of the convict, to whom such license was granted, and the Commissioner shall issue his warrant accordingly.

2. Such warrant shall and may be executed

by the constable to whom the same is given for that purpose in any part of Canada, and shall have the same force and effect in all parts of Canada as if the same had been originally issued or subsequently endorsed by a justice or other lawful authority having jurisdiction in the place where the same is executed.

3. Any holder of a license apprehended under such warrant, shall be brought as soon as conveniently may be before a justice of the peace of the county in which the warrant is executed, and such justice shall thereupon make out his warrant under his hand and seal for the recommitment of such convict to the penitentiary, gaol or other public or reformatory prison from which he was released by virtue of the said license, and such convict shall be so recommitted accordingly, and shall thereupon be remitted to his original sentence, and shall undergo the residue of such sentence which remainded unexpired at the time his license was granted: Provided that if the place where such convict is apprehended is not within the province, territory or district to which such penitentiary, gaol or other public or reformatory prison belongs, such convict shall be committed to the penitentiary, gaol, or other public or reformatory prison for the province, territory or district, within which he is so apprehended, and shall there undergo the residue of his sentence as aforesaid.

Altered as here set forth.

Sec. 11. Sec. 8. **Effect of forfeiture by any conviction.**—When any such license is forfeited by a conviction of an indictable offence or other conviction, or is revoked in pursuance of a summary conviction or otherwise, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for any offence in consequence of which his license is forfeited or revoked, further undergo a term of imprisonment equal to the portion of the term to which he was originally sentenced and which remained unexpired at the time his license was granted.

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2. If the original sentence in respect of which the license was granted was to a penitentiary, the convict shall for the purpose of serving the term equal to the residue of such original sentence be removed from the gaol or other place of confinement in which he is, if it be not a penitentiary, to a penitentiary by warrant under the hand and seal of any justice having jurisdiction at the place where he is confined.

3. If he is confined in a penitentiary, he shall undergo a term of imprisonment in that penitentiary equal to the residue of the original sentence.

4. In every case such convict shall be liable to be dealt with in all respects as if such term of imprisonment had formed part of his original sentence. *Altered, as here set forth.*

REPORTING TO POLICE.

Sec. 6. Sec. 9. **Notice by license holder to police authorities of his place of abode; and monthly reports of male holder of license to police authorities.** *Unchanged.*

OFFENCES AND PENALTIES.

Sec. 6. Sec. 10. **Penalty for failure to comply with the requirements of last preceding section.** *Unchanged.*

Sec. 7. Sec. 11. **Penalty for failure to produce license, or breaking its conditions.** *Unchanged.*

Sec. 8. Sec. 12. **Arrest of licensed convict, without warrant, by a peace officer, and trial, and forfeiture of license if convict believed to be living by dishonest means.** *Unchanged.*

ADMINISTRATION.

Sec. 12. Sec. 13. **Minister of Justice to advise.** *Unchanged.*

SCHEDULE.

Form A. License. *Unchanged.* (23)

Form B. Certificate of Conviction.
Meaning unchanged.

(23) Except by inserting, — after the word "penitentiary," — the words, "gaol or prison (*as the case may be*)."

THE LORD'S DAY ACT.

(R. S., 1906, c. 153)

Sec. 1. **Short Title.** — This Act may be cited as the *Lord's Day Act.*

INTERPRETATION.

Sec. 2. **Definitions.** — In this Act, unless the context otherwise requires, —

(*a*) 'Lord's Day' means the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon;

(*b*) 'person' has the meaning which it has in the Criminal Code;

(*c*) 'vessel' includes any kind of vessel or boat used for conveying passengers or freight by water;

(*d*) 'railway' includes steam railway, electric railway, street railway and tramway;

(*e*) 'performance' includes any game, match, sport, contest, exhibition or entertainment;

(*f*) 'employer' includes every person to whose orders or directions any other person is by his employment bound to conform;

(*g*) 'provincial Act' means the charter of any municipality, or any public Act of any province, whether passed before or since Confederation;

Sec. 3. **Operation of Dominion and Provincial railways.** — Nothing herein shall prevent the operation, on the Lord's Day, for passenger traffic by any railway company incorporated by or subject to the legislative authority of the Parliament of Canada, of its railway, where such operation is not otherwise prohibited.

2. Nothing herein shall prevent the operation on the Lord's Day for passenger traffic of any railway subject to the legislative authority of any province, unless such railway is prohibited by provincial authority from so operating.

COMMENCEMENT.

Sec. 4. **Commencement of Act.** — This Act shall come into force on the first day of March one thousand nine hundred and seven.

PROHIBITIONS.

Sec. 5. **No sales, no business and no work on Lord's Day.** — It shall not be lawful for any person on the Lord's Day, except as provided herein, or in any provincial Act or law

THE LORD'S DAY ACT.—*Continued.*

now or hereafter in force, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day, any work, business, or labour.

Sec. 6. **Substitution of another holiday for the Lord's Day.** — Except in cases of emergency, it shall not be lawful for any person to require any employee engaged in any work of receiving, transmitting or delivering telegraph or telephone messages, or in the work of any industrial process, or in connection with transportation, to do on the Lord's Day the usual work of his ordinary calling, unless such employee is allowed during the next six days of such week, twenty-four consecutive hours without labour.

2. This section shall not apply to any employee engaged in the work of any industrial process in which the regular day's labour of such employee is not of more than eight hours' duration.

Sec. 7. **Games and performances where admission fee is charged.** — It shall not be lawful for any person, on the Lord's Day, except as provided in any provincial Act or law now or hereafter in force, to engage in any public game or contest for gain, or for any prize or reward, or to be present thereat, or to provide, engage in, or be present at any performance or public meeting, elsewhere than in a church, at which any fee is charged, directly or indirectly, either for admission to such performance or meeting, or to any place within which the same is provided, or for any service or privilege thereat.

2. When any performance at which an admission fee or any other fee is so charged is provided in any building or place to which persons are conveyed for hire by the proprietors or managers of such performance or by any one acting as their agent or under their control, the charge for such conveyance shall be deemed an indirect payment of such fee within the meaning of this section.

Sec. 8. **Excursions by conveyances where fee is charged.** — It shall not be lawful for any person on the Lord's Day, except as provided by any provincial Act or law now or hereafter in force, to run, conduct, or convey by any mode of conveyance any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amuse-

THE LORD'S DAY ACT.—*Continued.*

ment or pleasure, and passengers so conveyed shall not be deemed to be travellers within the meaning of this Act.

A farmer who builds fences on his farm on a Sunday does not thereby infringe the Lord's Day Ordinance (N.W.T.), such employment not being *ejusdem generis* with that of a mechanic, workman or laborer. (24)

Sec. 9. **Advertising prohibited performances, etc.**—It shall not be lawful for any person to advertise in any manner whatsoever any performance or other thing prohibited by this Act.

2. It shall not be lawful for any person to advertise in Canada in any manner whatsoever any performance or other thing which if given or done in Canada would be a violation of this Act.

Sec. 10. **Shooting.**—It shall not be lawful for any person on the Lord's Day to shoot with or use any gun, rifle or other similar engine either for gain, or in such a manner or in such places as to disturb other persons in attendance at public worship or in the observance of that day.

Sec. 11. **Sale of foreign newspapers on Sunday.**—It shall not be lawful for any person to bring into Canada for sale or distribution, or to sell or distribute within Canada, on the Lord's Day, any foreign newspaper or publication classified as a newspaper.

WORKS OF NECESSITY AND MERCY EXCEPTED.

Sec. 12. **Works of necessity and mercy not prohibited.**—Notwithstanding anything herein contained, any person may, on the Lord's Day, do any work of necessity or mercy, and for greater certainty but not so as to restrict the ordinary meaning of the expression 'work of necessity or mercy,' it is hereby declared that it shall be deemed to include the following classes of work:—

(*a*) Any necessary or customary work in connection with divine worship;

(*b*) Work for the relief of sickness and suffering including the sale of drugs, medicines and surgical appliances by retail;

(*c*) Receiving, transmitting or delivering telegraph or telephone messages.

(*d*) Starting or maintaining fires, making repairs to furnaces, and repairs in cases of emergency, and doing any other work, when such fires, repairs or work are

(24) R. v. Hamren, 7 Can. Cr. Cas., 188.

THE LORD'S DAY ACT.—*Continued.*

essential to any industry, or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry, or its product, or to the plant or property used in such process;

(*e*) Starting or maintaining fires, and ventilating, pumping out and inspecting mines, when any such work is essential to the protection of property, life or health;

(*f*) Any work without the doing of which on the Lord's Day, electric current, light, heat, cold air, water or gas cannot be continuously supplied for lawful purposes;

(*g*) The conveying of travellers, and work incidental thereto;

(*h*) The continuance to their destination of trains and vessels in transit when the Lord's Day begins, and work incidental thereto;

(*i*) Loading and unloading merchandise, at intermediate points, on or from passenger boats or passenger trains;

(*j*) Keeping railway tracks clear of snow or ice, making repairs in cases of emergency, or doing any other work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day;

(*k*) Work before six o'clock in the forenoon and after eight o'clock in the afternoon of yard crews in handling cars in railway yards;

(*l*) Loading, unloading and operating any ocean-going vessel which otherwise would be unduly delayed after her scheduled time of sailing, or any vessel which otherwise would be in imminent danger of being stopped by the closing of navigation; or loading or unloading before seven o'clock in the morning or after eight o'clock in the afternoon any grain, coal or ore carrying vessel after the fifteenth of September;

(*m*) The caring for milk, cheese, and live animals, and the unloading of and caring for perishable products and live animals, arriving at any point during the Lord's Day;

(*n*) The operation of any toll or drawbridge, or any ferry or boat authorized by competent authority to carry passengers on the Lord's Day;

(*o*) The hiring of horses and carriages or small boats for

THE LORD'S DAY ACT.—*Continued.*

the personal use of the hirer or his family for any purpose not prohibited by this Act;

(*p*) Any unavoidable work after six o'clock in the afternoon of the Lord's Day, in the preparation of the regular Monday morning edition of a daily newspaper;

(*q*) The conveying His Majesty's mails and work incidental thereto;

(*r*) The delivery of milk for domestic use, and the work of domestic servants and watchmen;

(*s*) The operation by any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch which is, on the day of the coming into force of this Act, regularly so operated;

(*t*) Work done by any person in the public service of His Majesty while acting therein under any regulation or direction of any department of the Government;

(*u*) Any unavoidable work by fishermen after six o'clock in the afternoon of the Lord's Day, in the taking of fish;

(*v*) All operations connected with the making of maple sugar and maple syrup in the maple grove;

(*w*) Any unavoidable work on the Lord's Day to save property in cases of emergency, or where such property is in imminent danger of destruction or serious injury;

(*x*) Any work which the Board of Railway Commissioners for Canada, having regard to the object of this Act, and with the object of preventing undue delay, deems necessary to permit in connection with the freight traffic of any railway.

A confectioner, whose business does not, as a matter of fact, include the supplying of meals, will not by taking out a municipal victualling house license, become entitled to sell ice cream preparations on Sunday, although a similar sale by a person actually conducting a victualling house would be exempt under the Sunday observance statutes. (25)

The sale of ice cream to the public on Sunday by a dealer who is not the keeper of a victualling or eating house, is an offence in

(25) R. v. Sabine, 8 Can. Cr. Cas., 70.

Ontario under the *Lord's Day Act* of that province, — C. S. U. C., c. 104. (26)

The sale of ice cream is not an offence under the Ontario *Lord's Day Act*, where supplied in the *bona fide* exercise of the business of keeping an eating house. (26)

OFFENCES AND PENALTIES.

Sec. 13. **Violations of Act. — Penalties.** — Any person who violates any of the provisions of this Act shall for each offence be liable, on summary conviction, to a fine, not less than one dollar and not exceeding forty dollars, together with the cost of prosecution.

Sec. 14. Every employer who authorizes or directs anything to be done in violation of any provision of this Act, shall for each offence be liable, on summary conviction, to a fine not exceeding one hundred dollars and not less than twenty dollars, in addition to any other penalty prescribed by law for the same offence.

Sec. 15. Every corporation which authorizes, directs or permits its employees to carry on any part of the business of such corporation in violation of any of the provisions of this Act, shall be liable, on summary conviction before two justices of the peace, for the first offence, to a penalty not exceeding two hundred and fifty dollars and not less than fifty dollars, and, for each subsequent offence, to a penalty not exceeding five hundred dollars and not less than one hundred dollars, in addition to any other penalty prescribed by law for the same offence.

PROCEDURE.

Sec. 16. **Provincial Lord's Day Acts not affected.** — Nothing herein shall be construed to repeal or in any way affect any provisions of any Act or law relating in any way to the observance of the Lord's Day in force in any province of Canada when this Act comes into force; and where any person violates any of the provisions of this Act, and such offence is also a violation of any other Act or law, the offender may be proceeded against either under the provisions of this Act or under the provisions of any other Act or law applicable to the offence charged.

Sec. 17. **Limitation of action.** — No action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney General for the province in which the of-

(26) R. v. Stinson, 10 Can. Cr. Cas., 16.

fence is alleged to have been committed, nor after the expiration of sixty days from the time of the commission of the alleged offence.

The Quebec *Sunday Observance Act*, — which came into force on the 28th of February 1907,—is the 7th Edw. VII., c. 42, by section 2 of which it is provided that, "no person shall, on Sunday, for gain, except in cases of necessity or urgency, do or cause to be done any industrial work, or pursue any business or calling, or give or organize theatrical performances, or excursions where intoxicating liquors are sold, or take part in or be present at such theatrical performances or excursions." And, by section 6 of the Act, it is provided, that, — notwithstanding anything contained in the Act, whosoever conscientiously and habitually observes the seventh day of the week as the Sabbath day and actually abstains from work on that day, shall not be punishable for having worked on the first day of the week, if such work do not disturb other persons in the observance of the first day of the week as a holy day, and if the place where such work is done is not open for trade on that day.

THE FUGITIVE OFFENDERS' ACT. (27)

[R. S., 1906, c. 154].

Sec. 1. Sec. **1. Short Title.** *Unchanged.*

INTERPRETATION.

Sec. 2. Sec. **2. Definitions.** — In this Act, unless the context otherwise requires, —

(*a*) 'magistrate' means any justice of the peace or any person having authority to issue a warrant for the apprehension of persons accused of offences, and to commit such persons for trial;

(*b*) 'deposition' includes every affidavit, affirmation, or statement made upon oath;

(*c*) 'court' means,
in the province of Ontario, the High Court of Justice,
in the province of Quebec, the Superior Court,
in the province of Nova Scotia, New Brunswick, Prince Edward Island or Brit-

(27) See pages 1067-1073 of the Author's second edition of the Criminal Code for the old Act.

THE FUGITIVE OFFENDERS' ACT.—*Continued.*

ish Columbia, respectively, the Supreme Court for the province,
in the province of Manitoba, the Court of King's Bench,
in the province of Saskatchewan or Alberta, a judge of the Supreme Court of the Northwest Territories, pending the abolition of that Court by the legislature of the province, and, after the abolition of the said Court, a judge of such superior court as is established by the legislature of the province in lieu of the Supreme Court of the Northwest Territories,
in the Northwest Territories, such court, or magistrate, or other judicial authority as is designated from time to time by proclamation of the Governor in Council published in the *Canada Gazette*,
in the Yukon Territory, the Territorial Court, or a court, magistrate, or other judicial authority designated as aforesaid;

(*d*) 'fugitive' means a person accused of having committed an offence to which this Act applies in any part of His Majesty's dominions, except Canada, and who has left that part. (28)

APPLICATION.

Sec. 3. Sec. 3. **To what offences this Act applies.** — This Act shall apply to treason and to piracy, and to every offence, whether called felony, misdemeanor, crime or by any other name, which is for the time being punishable in the part of His Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labor for a term of twelve months or more, or by any greater punishment, and, for the purposes of this section, rigourous imprisonment, and any confinement in a prison combined with labor, by whatever name it is called, shall be deemed to be imprisonment with hard labor. (29)

(28) Altered and added to as here set forth.
(29) The old section 3 is divided into these four new sections.

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Sec. 3. Sec. **4. Application to acts not offences by Canadian law.** — This Act shall apply to every such offence, notwithstanding that, by the law of Canada, it is not an offence or not an offence punishable in manner aforesaid; and all the provisions of this Act including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in Canada an offence to which this Act applies. (29)

Sec. 3. Sec. **5. Application to persons unlawfully at large after conviction.** — This Act shall apply, so far as is consistent with the tenor thereof, to every person convicted by a Court in any part of His Majesty's dominions, of an offence committed either in His Majesty's dominions or elsewhere, who is unlawfully at large before the expiration of his sentence, in like manner as it applies to a person accused of the like offence committed in the part of His Majesty's dominions in which such person was convicted. (29)

Sec. 3. Sec. **6. As to offences committed before commencement of this Act.** — This Act shall apply in respect to offences committed before the commencement of this Act, in like manner as if such offences were committed after such commencement. (29)

PROCEDURE.

Sec. 4. Sec. **7. Apprehension and return of fugitive offenders.** — Any fugitive if found in Canada shall be liable to be apprehended and returned in the manner provided by this Act to the part of His Majesty's dominions from which he is a fugitive.

2. A fugitive may be so apprehended under an endorsed warrant or a provisional warrant.

Altered, as here set forth.

Sec. 5. Sec. **8. Proceedings in Canada on warrant issued elsewhere.** *Unchanged.*

Sec. 6. Sec. **9. Issue of a provisional warrant.** *Unchanged.* (30)

(29) The old section 3 is divided into these four new sections.
(30) Except that the old sec. 6 is made into two new sections.

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THE FUGITIVE OFFENDERS' ACT.—*Continued.*

Sec. 6. Sec. 10. **Report to Governor-General.** *Unchanged.* (30)

Sec. 7. Sec. 11. **Fugitive, on being apprehended, to be brought before a magistrate.** *Unchanged.* (31)

Sec. 7. Sec. 12. **Committal of fugitive.** *Unchanged.* (31)

Sec. 7. Sec. 13. **Magistrate to inform fugitive of his right to habeas corpus.** *Unchanged.* (31)

Sec. 7. Sec. 14. **Right to remand fugitive from time to time.** *Unchanged.* (31)

Sec. 8. Sec. 15. **Order for the return of fugitive.** — Upon the expiration of fifteen days, after a fugitive has been committed to prison to await his return, or, if a writ of habeas corpus or other like process is issued by a court with reference to such fugitive, after the final decision of the court in the case, if the fugitive is not discharged by the court, the Governor General, by warrant under his hand, if he thinks it just, may order the fugitive to be returned to the part of His Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed to the said part of His Majesty's dominions, to be dealt with there, in due course of law, as if he had been there apprehended.

2. Such warrant shall be forthwith executed according to the tenor thereof.

Altered, as here set forth.

Sec. 9. Sec. 16. **Discharge of fugitive if not returned within a certain time.** *Unchanged.*

Sec. 10. Sec. 17. **Court may, by reason of the trivial nature of the case and having regard to all the circumstances, discharge the fugitive.**

Meaning unchanged.

It has been held, in the Province of Quebec, that under the special wording of this section, — (and there is no similar section to be found in the Extradition Acts), — the Court, upon *habeas corpus* proceedings taken after the commitment for surrender, may review the facts forming the basis of the commitment; and, if, on such review, no *prima facie* case has been made out and no offence

(31) Except that the old sec. 7 is made into the four new sections.

THE FUGITIVE OFFENDERS' ACT.—*Continued.*

disclosed by the evidence adduced before the magistrate, the Court will order the accused to be discharged. (32)

Where, in a case decided, in England, under the Imperial *Fugitive Offenders' Act,* (which contains a clause to the same effect as the above section of our Act), an order was made, by a police Magistrate, committing the defendant to prison, before being sent to South Africa, for an offence alleged to have been committed by him there, and, upon the granting of a writ of *habeas corpus* it was held, discharging the rule, that on the facts there was a "strong or probable presumption," and it was doubted whether the Court has power to review the decision of the committing magistrate who has held that there is a strong or probable presumption that the accused committed the offence charged. (33)

Sec. 11. Sec. 18. **Fugitive undergoing sentence for another offence.** *Unchanged.*

Sec. 12. Sec. 19. **Search warrant may be granted.** *Unchanged.*

Sec. 13. Sec. 20. **Exercise of judicial powers.** *Unchanged.*

Sec. 14. Sec. 21. **Effect of endorsement of warrant.** *Unchanged.*

RETURN OF FUGITIVE.

Sec. 15. Sec. 22. **How the fugitive may be returned.** (34)

Sec. " Sec. 23. **Order to master of Canadian ship to convey fugitive.** (34)

Sec. " Sec. 24. **Endorsement upon ship's agreement.** (34)

Sec. " Sec. 25. **Duty of master upon arrival at destination.** (34)

Sec. " Sec. 26. **Penalty for non-compliance.** (34)

EVIDENCE.

Sec. 16. Sec. 27. **Depositions.** — *Unchanged.*

Sec. 17. Sec. 28. **Their use in evidence.** *Unchanged.*

Sec. 18. Sec. 29. **Authentication of warrants and other documents.** *Meaning unchanged.*

THE EXTRADITION ACT. (35)

[R. S., 1906, c. 155].

Sec. 1. Sec. 1. **Short Title.** The *Extradition Act. Unchanged.*

(32) R. v. Delisle, 5 Can. Cr. Cas., 210.

(33) R. v. Vyner, 68 J. P., 142; Mew's Ann. Dig., (1904), 133.

(34) These new sections, 22, 23, 24, 25 and 26, are formed from the old section 15, without any material alteration.

(35) The old *Extradition Acts,* (consisting of the R. S. C., 1886, c. 142, and of 52 Vic., c. 36), are consolidated as chapter 155 of the Revised Statutes 1906.

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INTERPRETATION.

Sec. 2. Sec.	**2. Definitions, — of,**	
(*a*)	(*a*) '**extradition arrangement**' or '**arrangement**';	*Unchanged.*
(*b*)	(*b*) '**extradition crime**';	*Unchanged.*
(*c*)	(*c*) '**conviction**' or '**convicted**'; and '**accused person**';	*Unchanged.*
(*d*)	(*d*) '**fugitive**' and '**fugitive criminal**';	*Unchanged.*
(*e*)	(*e*) '**foreign state**';	*Unchanged.*
(*f*)	(*f*) '**warrant**';	*Unchanged.*
(*g*)	(*g*) '**judge**'.—	*Unchanged.*

Part I.

EXTRADITION UNDER TREATY.

Application of Part.

Sec. 3. Sec. **3. To foreign state with which there is an arrangement.**

In the case of any foreign state with which there is an extradition arrangement, this Part shall apply during the continuance of such arrangement; but no provision of this Part, which is inconsistent with any of the terms of the arrangement, shall have effect to contravene the arrangement; and this Part shall be so read and construed as to provide for the execution of the arrangement. (36)

Taken (slightly altered) from par. 1 *of the old sec.* 3.

The procedure under this Act applies to offences made extraditable by a treaty made subsequent to the passing of the Act. (37)

Sec. 3. (2) Sec. **4. Application of this Part shall be subjected, by the Governor General, to the limitations, etc., of the Imperial Extradition Act.**

Unchanged in meaning. (38)

Sec. 3. (3) Sec. **5. Governor General may alter or revoke any order in council under this Part.**

Meaning unchanged. (38)

(36) The word "Part" is substituted for the word "Act."
(37) *Re* Collins, (No. 1), 10 Can. Cr. Cas., 70.
(38) Except that the word "Part" is substituted for the word "Act."

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Sec. 4.	Sec. 6. **When order in council affecting this Part shall operate.**	
Sec. 4	Sec. 7. **Orders in council, etc., publication of.**	
Sec. 4	Sec. 8. **Effect of publication in Canada Gazette.**	
		Unchanged. (38)

JUDGES AND COMMISSIONERS.

Sec. 5.	Sec. 9. **What Judges and Commissioners may act under this Part.**	*Meaning unchanged.*

The part of this section which purports to empower the Federal Government to appoint Extradition Commissioners to act judicially in extradition matters, within the limits of one province, is within the legislative powers of the Dominion, and does not contravene the exclusive power conferred on provincial legislatures respecting the constitution, maintenance and organization of provincial courts. (39)

Assuming that an extradition commissioner so appointed is a "court", that court is a federal one and not an inferior tribunal under the supervision of a provincial superior court, and Article 1003 of the Quebec Code of Civil Procedure authorizing writs of prohibition is not applicable to it. (40)

A writ of prohibition will not lie to determine the title of a *de facto* judicial officer, the appropriate proceeding for determining the title to a public office being that of *quo warranto*. (41)

A judge of the Court of Kings Bench of the province of Quebec held that there was a right of appeal, from a decision of that Court, to the Supreme Court of Canada, upon the affirmance, by the former Court, in prohibition proceedings, of the validity of appointments, by the Governor General, of extradition commissioners. (42) But the Supreme Court of Canada overruled this holding, and held that an application for a writ of prohibition to restrain an extradition commissioner, from holding an enquiry upon a demand of extradition for larceny, is a proceeding arising out of a criminal charge within the meaning of the Supreme Court Act, and that no appeal lies to the Supreme Court of Canada from the refusal

(38) Except that the word "Part" is substituted for the word "Act."
(39) *Ex p.* Gaynor & Greene, (No. 4), 9 Can. Cr. Cas., 240; *Re* Gaynor & Greene, (No. 6), 9 Can. Cr. Cas., 486.
(40) *Re* Gaynor & Greene, (No. 6), *supra.*
(41) *Ex parte* Gaynor & Greene, (No. 4), *supra.*
(42) *Re* Gaynor & Greene, (No. 7), 9 Can. Cr. Cas., 492.

by a provincial court of such a writ, although prohibition is sought upon the ground that the extradition commissioner was not appointed by competent authority. (43)

By sec. 31 of the Supreme and Exchequer Courts Act (R. S. C., c. 135) "no appeal shall be allowed in any case of proceedings for or upon a writ of *habeas corpus* arising out of any claim for extradition made under any treaty." An application to the court to fix a day for hearing a motion to quash an appeal from an order refusing a *habeas corpus* in an extradition matter should be refused, the matter being *coram non judice* and there being no necessity for a motion to quash. (44)

The Supreme and Exchequer Courts Act (R. S. C., 1886, c. 135) has been repealed, and has been replaced by the Supreme Court Act (R. S. 1906, c. 139), — which relates to the Supreme Court of Canada, — and by the Exchequer Court Act, (R. S. 1906, c. 140), — which relates to the Exchequer Court of Canada; and the above quoted clause of section 31 of the repealed Act has been re-enacted and now forms part of section 36 of the new Supreme Court Act.

EXTRADITION FROM CANADA.

Sec. 6. Sec. **10. On what grounds a warrant to apprehend a fugitive may issue. Report to Minister of Justice.** *Unchanged.* (45)

According to this section, there must, in a case of extradition, be a warrant to arrest, either from the authorities of the foreign state or from an extradition commissioner or judge in Canada, in order to have the alleged fugitive arrested. In other words, an arrest to answer an extradition charge cannot be legally made without a warrant.

For instance, an arrest made in Canada, upon a mere request by telegram or letter from the police officials of a foreign state, will not be legal. (46)

And, where an alleged fugitive was so arrested, a warrant subsequently issued and served upon him, while in custody, did not validate the previous arrest nor legalize his further detention thereon; but it was held that he should have been set at liberty before the issue and service upon him of the warrant afterwards issued. (47)

(43) *Re* Gaynor & Greene, (No. 10), 10 Can. Cr. Cas., 21.
(44) R. v. Lazier, (No. 2), 3 Can. Cr. Cas., 419.
(45) Except that the word "Part" is substituted for the word "Act."
(46) *Ex p.* Cohen, 8 Can. Cr. Cas., 312; *Re* Dickey, (No. 1), 8 Can. Cr. Cas., 318.
(47) *Ex p.* Cohen, *supra.*

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It has also been held that a warrant of arrest in extradition proceedings must not be executed by the constable who makes the information for obtaining the warrant, and that a person so arrested is entitled to be released on *habeas corpus;* and, further, that the information for an extradition warrant of arrest must show that the accused is, or is suspected to be in Canada, and that the information is insufficient if made upon information and belief without disclosing the facts upon which the information and belief are based. (48)

It seems that if a commissioner acts upon a foreign warrant, the original foreign warrant must be produced; and it must be established that it is still in force. (49)

The jurisdiction of an extradition commissioner or judge extends over the whole of the province for which he is appointed, and is not limited to the judicial district for which he is a judge; and he may, therefore, order a prisoner to be brought before him from any part of the province in which such prisoner is arrested. (50)

It has been held that an extradition information, upon which a warrant of arrest is issued, may be valid although it is made on information and belief only and does not disclose the grounds of belief. (51)

Sec. 7. Sec. 11. **Execution of warrant in any part of Canada.** *Unchanged.*

Sec. 8. Sec. 12. **Surrender not to depend on time when offence committed.** *Meaning unchanged.*

Sec. 9. Sec. 13. **Fugitive to be brought before Judge.**

Sec. 9. Sec. 14. **Evidence of charge.** *Unchanged.*

Where a prisoner is brought before an extradition judge in pursuance of a warrant of arrest, and charged with an extradition offence, he may be remanded for the purpose of affording the prosecution an opportunity of adducing evidence. (52)

It has been held, in Ontario, that a County Judge, acting as an Extradition Judge, has no power to bail the accused pending the enquiry before him; (53) and, although in a later case in the Province of Quebec the Court intimated that an Extradition Judge or Commissioner has the power to admit to bail up to the time of commitment, it was held that, under ordinary circumstances, the

(48) *Re* Dickey, (No. 2), 8 Can. Cr. Cas., 321.
(49) *In re* Bongard, 5 Terr. L. R., 10; 6 Can. Cr. Cas., 74.
(50) *Ex p.* Gaynor & Greene, (No. 1), 7 Can. Cr. Cas., 375.
(51) *Re* Harsha, (No. 2), 11 Can. Cr. Cas., 62.
(52) *Re* Gaynor & Greene, (No. 3), 9 Can. Cr. Cas., 205.
(53) *Re* Stern, 7 Can. Cr. Cas., 791.

accused should not be admitted to bail pending the reasonable delay required by the prosecution to bring witnesses from the foreign country to prove the charge. (54)

It seems, according to another case in the province of Quebec, that an extradition commissioner has, pending the extradition enquiry, a discretion to admit to bail. (55)

Where a prisoner whose extradition was sought was brought before a Judge of the Superior Court on a writ of *habeas corpus* issued before the committal of the accused, and before the conclusion of the enquiry before the commissioner, it has been held, in the province of Quebec, that the powers of the Judge are limited to determining whether the commissioner has jurisdiction to make the enquiry. (56)

But afterwards it was held, by another Judge, that the legality of the arrest and of the warrant of arrest in extradition proceedings may be enquired into upon *habeas corpus*, without awaiting the conclusion of the Extradition Commissioner's enquiry; also that the quashing by a judge of one writ of *habeas corpus* issued during the enquiry does not prevent the issue of another writ by another judge, — the matter not being *res judicata*, if other grounds are taken in the petition for the second writ, and if the petitioner has abandoned the first writ before the judgment quashing it; and, further, that the time of the commission of the alleged offence is an essential element in describing it, and when the warrant does not mention the date of the alleged offence, — which is one *not* covered by an early extradition treaty, but covered by a later treaty which is not retroactive, — the warrant is invalid as not alleging an extraditable offence and as not disclosing jurisdiction to issue the warrant. (57)

But, on an appeal to the Privy Council, the latter decision was reversed; and it was held, among other things, that,—when an accused, on being brought before an extradition judge, is remanded to give the prosecution an opportunity of adducing evidence, — a return to a writ of *habeas corpus*, issued pending such remand, is good, if it discloses an information duly laid before an extradition judge having jurisdiction over the subject matter of the enquiry, the appearance of the accused before such judge, and the latter's warrant of remand; and, further, that the omission to shew, in the warrant of remand, that the alleged offence was subsequent to an

(54) U. S. v. Weiss, 8 Can. Cr. Cas., 62.
(55) *Re* Gaynor & Greene, (No. 5), 9 Can. Cr. Cas., 255.
(56) *Ex p.* Gaynor & Greene, (No. 1), *supra*.
(57) *Ex p.* Gaynor & Greene, (No. 2), 7 Can. Cr. Cas., 289.

extradition convention having no retroactive application is not a ground for holding the detention of the accused to be invalid. (58)

Sec. 9. Sec. **15. Evidence may be received to shew that crime is a political one.** *Meaning unchanged.*

Sec. 10. Sec. **16. Depositions, etc., taken out of Canada.** *Unchanged.*

Ex parte affidavits taken in the foreign State and duly authenticated are admissible in evidence upon an extradition proceeding; and such *ex parte* affidavits may be sworn and authenticated either before or after the laying of the extradition information. (58*a*)

Sec. 10. Sec. **17. When to be deemed authenticated.** — Such papers shall be deemed duly authenticated if authenticated in manner provided, for the time being, by law, or if, —

(*a*) the warrant purports to be signed by, or the certificate purports to be certified by, or the depositions or statements, or the copies thereof, purport to be certified to be the originals or true copies, by a judge, magistrate or officer of the foreign state; and,

(*b*) it the papers are authenticated by the oath or affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other minister of the foreign state, or of a colony, dependency or constituent part of the foreign state; of which seal the judge shall take judicial notice without proof. (59)

Depositions taken in the foreign state, which are certified to have been sworn to at a date subsequent to that of the foreign warrant of arrest are irregular, and extradition will not be granted on such evidence. (60)

The indictment of the accused in the foreign country is hearsay evidence only, and is not admissible as evidence in the enquiry before the commissioner. (61)

The clerk of a State Court of criminal jurisdiction in one of the

(58) *Re* Gaynor & Greene, (No. 3), 9 Can. Cr. Cas., 205.

(58*a*) U. S. v. Browne, (No. 2), 11 Can. Cr. Cas., 167.

(59) Taken (without any material alteration) from subsection 2 of the old section 10.

(60) *Re* Ockerman, 2 Can. Cr. Cas., 262.

(61) *Ex p.* Feinberg, 4 Can. Cr. Cas., 270. And see U. S. v. Browne, (No. 2), 11 Can. Cr. Cas., 167.

States of the United States of America is an "officer of the foreign State" for the purpose of certifying the information laid in that Court for an extraditable offence; and a copy of the information so certified under the seal of his Court is duly authenticated, if certified by the Governor of the State and the "Secretary of State" of that State under the State seal and accompanied by the certificate of the Secretary of State of the United States under his official seal certifying such State seal and by the certificate of the British Embassy verifying the latter certificate. (62)

The State Attorney for the county in which the charge was laid is an "officer of the foreign State" for the purpose of authenticating an original deposition of a witness taken in that county to be used as evidence in obtaining the extradition; and such authentication may be made by the deposition of such State attorney duly certified by the State and Federal authorities. (63)

The Governor of a State in the United States is not a "Minister of the foreign State," within the meaning of subsec. (*b*) of the above section 17. (63*a*)

Various cognate offences arising from the same transaction may be included in one commitment for extradition. And a committal for extradition may properly include a new charge for which a supplementary information was laid pending the extradition enquiry, if the additional charge relates to the same transaction and a *prima facie* case in respect thereof is made out upon the evidence. (64)

A commitment for extradition on a charge of forging admission tickets is improperly made when no genuine or forged ticket is in evidence on the extradition enquiry, and no facts are shewn to legally excuse the non-production. (65)

Proof of an indictment, verdict and sentence for *conspiracy* to defraud will not alone support a commitment in extradition for the *fraud itself*. (66)

Sec. 11. Sec. **18. What evidence sufficient for committal.**

(*a*) In the case of a fugitive alleged to have been convicted of an extradition crime, if such evidence is produced as would, according to the law of Canada, subject to the provisions of this Part, prove that he was so convicted; and,

(62) *Re* Lewis, 9 Can. Cr. Cas., 233.
(63) *Ib.*
(63*a*) *Ex p.* Cadby, 26 N. B. R., 452.
(64) *Re* Gaynor & Greene, (No. 11), 10 Can. Cr. Cas., 154.
(65) *Re* Harsha, (No. 1), 433.
(66) U. S. v. Brown, (No. 1), 11 Can. Cr. Cas., 161.

(*b*) in the case of a fugitive accused of an extradition crime, if such evidence is produced as would, according to the law of Canada, subject to the provisions of this Part, justify his committal for trial, if the crime had been committed in Canada;

the judge shall issue his warrant for the committal of the fugitive to the nearest convenient prison, there to remain until surrendered to the foreign state, or discharged according to law.

2. If such evidence is not produced, the judge shall order him to be discharged.

Slightly altered, as here set forth.

Before ordering the extradition from Canada of a fugitive, an extradition commissioner must be satisfied that the offence charged is a crime against the law of the country demanding the extradition, as well as that it would, if committed in Canada, be an offence against Canadian law, and that it is within the treaty with the foreign country. (67)

In extradition proceedings for an assault with intent to commit murder, the prosecution must prove such intent as well as the assault, and a committal for extradition is only authorized where the evidence,—had the crime been committed in Canada,—would have justified a "committal for trial" for the extradition crime charged and not merely for a less serious offence included therein. (68)

A warrant of arrest issued by an extradition commissioner may properly describe the offence by the phraseology of the country in which it issues. (69)

It is not essential to an extraditable offence that it should be described in identically the same terms in both the demanding and the surrendering country, but there must be the essential elements of a like extradition crime in each country. (70)

The question of probability of conviction is not one for the consideration of an extradition commissioner, if he finds sufficient evidence of guilt to justify a committal. (71)

A warrant of committal for extradition following the statutory

(67) *Ex p.* Seitz, (No. 2), 3 Can. Cr. Cas., 127. And see *Re* Latimer, 10 Can. Cr. Cas., 244.
(68) *Re* Kelly, 5 Can. Cr. Cas., 541.
(69) *Re* F. H. Martin, 8 Can. Cr. Cas., 326.
(70) *Re* Gaynor & Greene, (No. 11), 10 Can. Cr. Cas., 154.
(71) *Re* Collins, (No. 2), 10 Can. Cr. Cas., 73.

form is not objectionable for a failure to shew on its face that the statutory pre-requisites of the commissioner's jurisdiction have been complied with. (72)

A warrant of commitment for extradition is valid as to form if it follows the forms prescribed by the Extradition Act, without reciting specifically that the commissioner finds upon the evidence a *prima facie* case. (73)

Foreign law is to be proved in extradition matters by the evidence of experts, and is to be dealt with as a matter of fact. (74)

Sec. 12. Sec. 19. **Judge's information to fugitive on committal. Habeas corpus. Transmission of evidence to Minister of Justice.** *Unchanged.*

Upon *habeas corpus* proceedings following a commitment under an extradition warrant, the Court is not justified in referring to the depositions returned, and inferring therefrom facts material to the proof of the offence, if the warrant of commitment is in itself defective in that it does not recite a finding of such facts. (75)

The Court may revise the commissioner's decision on the question of whether or not there was legal and competent evidence tending to prove the commission of the crime, but it will not review the commissioner's decision as to the sufficiency of the evidence to justify the committal. (76)

Under ordinary circumstances bail should not be granted to a person committed for extradition. Where bail was granted to the accused in extradition proceedings pending a *habeas corpus* application on his behalf, and afterwards the application for his discharge under habeas corpus was refused, the accused must surrender himself into close custody before a fresh application will be entertained to bail him pending an appeal from the order refusing his discharge. (77)

A petition for a writ of *habeas corpus* may be refused if the Court is satisfied that the writ would, if issued, be quashed upon the petitioner's own shewing. (78)

Upon an extradition enquiry, if the accused be released because of the insufficiency of the evidence, or if he is discharged on *habeas corpus* on that ground, after an order of committal made by the

(72) *Re* Collins, (No. 3), 10 Can. Cr. Cas., 80.
(73) *Re* Gaynor & Greene, (No. 11), 10 Can. Cr. Cas., 154.
(74) *Re* Collins, (No. 3), *supra*.
(75) *Re* Murphy, 2 Can. Cr. Cas., 578. And see *Ex p.* Seitz, (No. 1), 3 Can. Cr. Cas., 54.
(76) *Ex p.* Feinberg, *supra*; *Re* Horace D. Gates, 8 Can. Cr. Cas., 249. *Re* Collins, (No. 3), *supra*.
(77) *Re* Watts, 5 Can. Cr. Cas., 538.
(78) U. S. v. Weiss, 8 Can. Cr. Cas., 62.

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extradition judge, further proceedings may be begun *de novo* with respect to the same offence; and the want of evidence may be supplied upon the subsequent re-arrest for the same extraditable offence; and the doctrines of *res judicata* and former jeopardy do not apply. (79)

But if the accused be discharged upon the merits and upon the ground that what is charged against him does not constitute an indictable offence, such discharge is final. (79)

Sec. 13. Sec. **20. By whom requisition for surrender may be made of a fugitive criminal of a foreign state.** *Meaning unchanged.*

Sec. 14. Sec. **21. When fugitive not liable to surrender. — Political offence.** *Unchanged.*

Sec. 15. Sec. **22. Minister may refuse to make order for surrender or cancel order when made, if offence political, etc.** *Meaning unchanged.*

Sec. 16. Sec. **23. Delay after committal before surrender. — Habeas Corpus.** (80)

A judge of a superior court may grant bail after commitment by an extradition commissioner, but the power should not be exercised except under exceptional circumstances, such as the life of the fugitive being endangered by his close confinement. (81)

Sec. " Sec. **24. If fugitive an offender under Canadian law.** (80)

It is not essential that a writ of *habeas corpus* under this section should be returnable in Court, and it is sufficient that the writ is returnable before a judge sitting in chambers if the latter practice is authorized under the general law in force in the province. (82)

Sec. 17. Sec. **25. Surrender to officer of foreign state.** (83)

Sec. " Sec. **26. Powers of such officer.** (83)

Sec. 18. Sec. **27. Property found on fugitive.**

Sec. 19. Sec. **28. Fugitive to be conveyed out of Canada within certain time, or may be released.** *Unchanged.*

With regard to a clause, in the Extradition Treaty with Germany, providing that "if sufficient evidence for the extradition be not produced within two months from the apprehension of the fugitive, he shall be set at liberty," it has been held that the object thereof is to prevent a fugitive from being detained for more than two

(79) *Re* Harsha, (No. 2), 11 Can. Cr. Cas., 62.
(80) Formed (without alteration) from the old section 16.
(81) *Re* Gaynor & Greene, (No. 9), 9 Can. Cr. Cas., 542.
(82) *Re* Gaynor & Greene, (No. 8), 9 Can. Cr. Cas., 496.
(83) Formed (without altering the meaning) from the old section 17.

months *upon suspicion;* and it seems that a prisoner is not entitled, under that clause, to be released, when in the magistrate's opinion, sufficient evidence has been adduced within two months, and that, in such a case, the magistrate can, after the expiration of the two months, take evidence in other cases against the prisoner and commit him for extradition upon all of them. (83*a*)

Sec. 20. Sec. **29. Forms.** *Unchanged.*

EXTRADITION FROM A FOREIGN STATE.

Sec. 21. Sec. **30. By whom and to whom requisition to be made for surrender of a fugitive criminal from Canada.** *Meaning unchanged.*

Sec. 22. Sec. **31. Conveyance of fugitive surrendered.** *Unchanged.*

Sec. 23. Sec. **32. Surrendered fugitive not punishable contrary to extradition arrangement.** *Unchanged.*

LIST OF CRIMES.

Sec. 24. Sec. **33. How list of crimes in first schedule shall be construed.** *Unchanged.*

PART II.

EXTRADITION IRRESPECTIVE OF TREATY.

Sec. **34. This Part not to be in force until publication of proclamation.** — The provisions of this Part shall not come into force with respect to fugitive offenders from any foreign state, until this Part shall have been declared by proclamation of the Governor General to be in force and effect as regards such foreign state, from and after a day to be named in such proclamation.

2. If by proclamation the Governor General declares this Part to be no longer in operation as regards any foreign state, the provisions thereof shall cease to have any force or effect with respect to fugitive offenders from such state from and after a day to be named in such proclamation. (84)

(83*a*) *In re* Bluhm, [1901], 1 K. B., 764.

(84) Taken (without any material alteration) from section 4 of the *Extradition Act of* 1889, (52 Vic., c. 30).

THE EXTRADITION ACT.—*Continued.*

Sec. 35. **Application of this Part.** — The provisions of this Part shall apply to any crime mentioned in the third schedule to this Act committed after the coming into force of this Part, as regards any foreign state to which this Part has been by proclamation declared to apply. (85)

Sec. 36. **Extradition where there is no extradition arrangement, or if crime not included.** — In case no extradition arrangement exists between His Majesty and a foreign state, or in case such an extradition arrangement, extending to Canada, exists between His Majesty and a foreign state, but does not include the crimes mentioned in the third schedule to this Act, it shall, nevertheless, be lawful for the Minister of Justice to issue his warrant for the surrender to such foreign state of any fugitive offender from such foreign state charged with or convicted of any of the crimes mentioned in the said schedule.

2. The arrest, committal, detention, surrender and conveyance out of Canada of such fugitive offender shall be governed by the provisions of Part I. of this Act, and all the provisions of the said Part shall apply to all steps and proceedings in relation to such arrest, committal, detention, surrender and conveyance out of Canada in the same manner and to the same extent as they would apply if the said crimes were included and specified in an extradition arrangement between His Majesty and the foreign state, extending to Canada. (86)

Sec. 37. **Expenses of conveying out of Canada a fugitive extradited to foreign State.** (87)

Sec. 38. **Law of Canada to govern as to crimes.** — The list of crimes in the third schedule to this Act shall be construed according to the law existing in Canada at the date of the commission of the alleged crime, whether by common law or by statute, and as including only such crimes of

(85) Taken from subsection 2 of section 3 of the *Extradition Act of* 1889.

(86) Taken from section 1 of the *Extradition Act of* 1889.

(87) Taken (unaltered) from section 2 of the *Extradition Act of* 1889.

the description comprised in the list as are, under that law, indictable offences. (88)

Sec. 39. **Restriction. When a warrant not to issue.** — No warrant shall issue under this Part for the extradition of any person, to any state or country in which by the law in force in such state or country, such person may be tried after such extradition for any other offence than that for which he has been extradited, unless an assurance shall first have been given by the executive authority of such state or country, that the person whose extradition has been claimed shall not be tried for any other offence than that on account of which such extradition has been claimed. (89)

FIRST SCHEDULE.

List of Crimes.

The first schedule, containing a list of extradition crimes, is the same as the first schedule to the *Extradition Act of* 1886, with these exceptions that item 5 of the first schedule now reads, "Larceny or theft," instead of "Larceny," and item 24 of the first schedule is altered so as to read as follows:—

"24. Any offence under,—

(*a*) Part VI. of the Criminal Code, except sections 307 to 312 inclusive, and sections 317 to 334 inclusive;

(*b*) Part VII. of the Criminal Code, except sections 408 and 409, 416 to 418 inclusive, 429 to 444 inclusive, and sections 486 to 508 inclusive;

(*c*) Part VIII. of the Criminal Code, except sections 516, 519, 524, 527, 529 and 538, and sections 542 to 545 inclusive; and,

(*d*) Part IX. of the Criminal Code; and which are not included in any foregoing portion of this schedule."

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(88) Taken from the first par. of sec. 3 of the *Extradition Act of* 1889.

(89) Taken (slightly altered) from sec. 5 of the *Extradition Act of* 1889

SECOND SCHEDULE.

FORM ONE.

Form of Warrant of Apprehension.

FORM TWO.

Form of Warrant of Committal.

FORM THREE.

Form of Order of Minister of Justice for Surrender.

The forms contained in the second schedule are the same (unaltered) as those contained in the second schedule to the *Extradition Act of* 1886.

THIRD SCHEDULE.

The third schedule, containing a list of the crimes to which Part II. of the present Extradition Act is applicable, is the same as the schedule to the *Extradition Act of* 1889 with this exception that item 5 of this third schedule now reads, "Larceny or theft," instead of Larceny."

EXTRADITION BETWEEN CANADA AND THE UNITED STATES.

The *Ashburton Treaty* (of 1842) between Great Britain and the United States, and the subsequent supplementary conventions of 12th July, 1889, of 13th December 1900 and of 21st December 1906, make provision for the extradition, between Canada, (as a part of British Territory), and the United States, of fugitive criminals accused or convicted of any of the following crimes:—

MURDER.
PIRACY.
ARSON.
ROBBERY.
FORGERY; UTTERING OF FORGERIES.
MANSLAUGHTER when voluntary.
COUNTERFEITING; UTTERING COUNTERFEIT MONEY.
EMBEZZLEMENT; LARCENY; RECEIVING any money, valuable security or other property knowing the same to have been embezzled, stolen or fraudulently obtained.
FRAUD, by a bailee, banker, agent, factor, trustee, director, mem-

EXTRADITION WITH THE U. S.—*Continued.*

ber or officer of any company, made criminal by the laws of both countries.

OBTAINING money, valuable securities or other property BY FALSE PRETENCES.

PERJURY; SUBORNATION OF PERJURY.

PROCURING ABORTION.

RAPE; ABDUCTION; CHILD STEALING; KIDNAPPING.

BRIBERY, defined to be the offering, giving or receiving of bribes made criminal by the laws of both countries.

OFFENCES, — if made criminal by the laws of both countries, — AGAINST BANKRUPTCY LAW.

BURGLARY; HOUSE-BREAKING; SHOP-BREAKING.

PIRACY, by the law of nations.

REVOLT or CONSPIRACY TO REVOLT by two or more persons on board a ship on the high seas against the authority of the master; WRONGFULLY SINKING OR DESTROYING A VESSEL AT SEA; or ATTEMPTING to do so; ASSAULTS ON BOARD A SHIP on the high seas WITH INTENT to do grievous bodily harm.

CRIMES AND OFFENCES against the laws of both countries for the suppression of SLAVERY AND SLAVE TRADING.

WILFUL and UNLAWFUL DESTRUCTION or OBSTRUCTION of railroads, which endangers human life.

PARTICIPATION in any of these crimes, provided such participation be punishable by the laws of both countries.

Extradition lies from Canada to the State of New York for an offence named in the extradition treaties between Great Britain and the United States, although such offence is not against a federal law of the United States, if, by the laws both of Canada and of the demanding State, the offence charged is criminal and within the list of crimes specified in the treaties. (90)

Conspiracy to defraud is in itself not an extraditable offence between Canada and the United States, but extradition will lie as for a separate crime in respect of any overt act (of a conspiracy) which constitutes one of the crimes mentioned in the extradition arrangement. The extraditable offence of *larceny*, or *participation in larceny* is sufficiently charged in an information laid on instituting extradition proceedings therefor, if, — following a charge of conspiracy to defraud between the accused and another person, and of an embezzlement and theft by such other person in pursuance of such conspiracy, — the information alleges that the accused "did participate in the said offence of embezzlement and theft."(91)

(90) *Re* Lorenz, 9 Can. Cr. Cas., 158.

(91) U. S. v. Gaynor; *Re* Gaynor & Greene, (No. 3), 9 Can. Cr. Cas., 205.

EXTRADITION WITH THE U. S.—*Continued.*

Where extradition is sought upon a charge of *participation in a theft* alleged to have been committed of property of the government of the demanding country, and the demanding country produces, in support of the charge, an indictment found in such country upon a charge of conspiracy wherein the acts of theft are alleged as overt acts of the conspiracy, the demanding State is not thereby estopped from treating such overt acts as independent acts of theft for the purposes of extradition. (92)

A charge of "grand larceny" is within the extradition arrangement with the United States, it being a species of "larceny." (93)

It has been held that merchandise is not "other property" within the meaning of the phrase "receiving any money, valuable security or other property knowing the same to have been embezzled, stolen or fraudulently obtained," contained in the Extradition Convention with the United States, that these words "other property" refer only to property *ejusdem generis* with "money" and "valuable security," and that extradition does not lie for the offence of receiving an article of *merchandise* knowing it to have been stolen. (94)

A customs officer of the United States is an "agent" of the government of that country, within the meaning of the phrase "fraud by a bailee, banker, agent," etc., contained in the Extradition Convention with the United States, and he may be extradited from Canada for "fraud by an agent made criminal by the laws of both countries," in respect of the fraudulent appraisal of goods for customs duty; and proof of a United States statute imposing a fine or imprisonment as alternative punishments for frauds by customs officers is evidence of the criminality of such frauds, although the statute does not expressly declare the same to be crimes. (95)

Upon a demand of extradition for perjury it is not necessary to prove that the oath was administered with the formalities essential under Canadian law. It is sufficient if, in the foreign State, there were such observances as, in substance, constitute the administration of an oath, and such as are there recognized as the taking of a valid oath. (96)

In the absence of evidence to the contrary, the crime of "child stealing" mentioned in the convention with the United States should be assumed to be identical with the offence so designated by Canadian law; but the accused may shew that the crime of

(92) *Ib.*
(93) *Re* Lewis, 9 Can. Cr. Cas., 233.
(94) *Ex. p.* Cohen, 8 Can. Cr. Cas., 312.
(95) U. S. v. Browne, (No. 2), 11 Can. Cr. Cas., 107.
(96) *Re* Collins, (No. 3), 10 Can. Cr. Cas., 80.

EXTRADITION WITH THE U. S.—*Continued.*

"child stealing" under the foreign law is not covered by the facts disclosed by the depositions; and where such is shewn the accused should be discharged. (97)

The child's own father may be guilty of child stealing, if, after a divorce by a Court of competent jurisdiction and the award, thereon, of the custody of the child to the mother, the father wilfully removes the child from her custody; and an objection, by the husband, to the validity of the divorce, on the ground of collusion, cannot, where the collusion is denied on oath, be adjudicated upon by the extradition commissioner, but extradition should be ordered notwithstanding such objection, and the accused left to his right to contest the divorce decree at his trial by the foreign Court. (98)

Where a divorce decree of a Court of competent jurisdiction, in the United States, has awarded the custody of a child to the father against the mother, and the mother subsequently removes and conceals the child, to evade the decree, a *prima facie* case for extradition is thereby made out against the mother upon a charge of child stealing; and it seems that the offence of child stealing may be complete against the child's mother, although the father to whom the child's custody has been awarded has never had any actual separate possession of the child. (99)

LIST OF GREAT BRITAIN'S EXTRADITION TREATIES (WITH FOREIGN STATES) IN FORCE IN CANADA.

Foreign State.	Date.	Reference.
Argentine (Republic)	May 22, 1889.	Acts of Can., 1894, p. xliii.
Austria-Hungary	Dec. 3, 1873.	" " 1875, p. xviii.
" "	June 26, 1901.	" " 1903, p. lx.
Belgium	Oct. 29, 1901.	" " 1902, p. xxxvii.
Bolivia (Republic)	Feb. 22, 1892.	" " 1899, p. xlii.
Brazil	Nov. 13, 1872.	" " 1875, p. xi.
Chile (Republic)	Jan. 26, 1897.	" " 1899, p. vi.
China	Mch. 1, 1894.	Cl. Extr., 4 Ed. Append. clxlx.
Colombia (Republic)	Oct. 27, 1888.	Acts of Can., 1890, p. xxxi.
Cuba (Republic)	Oct. 6, 1904.	" " 1906, p. vi.
Denmark	Mch. 31, 1873.	Cl. Extr., 4 Ed. Append. clxxxii.
Equator (Republic)	Sept. 20, 1880.	Acts of Can., 1887, p. xxxv.
France	Aug. 14, 1876.	" " 1879, p. lx.
"	Feb. 13, 1896.	Cl. Extr., 4 Ed. Append. ccxxvii.
" [Tunis]	Dec. 31, 1889.	Acts of Can., 1891, p. xlix.

(97) R. v. Watts, 5 Can. Cr. Cas., 246.
(98) *Ib.*
(99) *Re* Lorenz, 9 Can. Cr. Cas., 158.

LIST OF GREAT BRITAIN'S EXTRADITION TREATIES (WITH FOREIGN STATES) IN FORCE IN CANADA.—*Continued.*

FOREIGN STATE.	DATE.	REFERENCE.
Germany	May 14, 1872	Cl. Extr., 3 Ed. Append. cl.
"	May 5, 1894	Acts of Can., 1895, p. xlii.
Guatemala	July 4, 1885	" " 1887, p. xcii.
Hayti (Republic)	Dec. 7, 1874	" " 1876, p. lvi.
Italy	Feb. 5, 1873	Cl. Extr., 4 Ed. Append. cclxv.
"	May 7, 1873	" " " cclxxvi.
Liberia (Republic)	Dec. 16, 1892	Acts of Can., 1894, p. lviii.
Luxembourg	Nov. 24, 1880	" " 1882, p. iii.
Mexico	Sept. 7, 1886	" " 1889, p. xvii.
Monaco	Dec. 17, 1891	" " 1892, p. xvi.
Netherlands	Sept. 26, 1898	" " 1899, p. xx.
Portugal (99)	Oct. 17, 1892 Nov. 30, 1892	" " 1894, pp. li-lvii.
Roumania	Mch. 21, 1893	" " 1894, p. lxiv.
Russia	Nov. 24, 1886	" " 1887, p. c.
Salvador	June 23, 1881	" " 1883, p. xxviii.
San Marino	Oct. 16, 1899	" " 1900, p. xi.
Servia	Dec. 6, 1900	" " 1902, p. xviii.
Siam	Sept. 3, 1883	Cl. Extr., 4 Ed. Append. ccccxvii.
"	Nov. 30, 1885	" " " ccccxx.
Spain	June 4, 1878	Acts of Can., 1879, p. xviii.
"	Feb. 19, 1889	" " 1890, p. xxvi.
Sweden & Norway	June 26, 1873	" " 1875, p. v.
Switzerland	Nov. 26, 1880	" " 1882, p. viii.
"	June 29, 1904	" " 1906, p. xliii.
Tonga (100)	Nov. 29, 1879	Cl. Extr., 4 Ed. Append. cccclxv.
"	July 3, 1882	" " " ccccixx.
United States	Aug. 9, 1842	" " " ccccixxi.
" "	July 12, 1889	Acts of Can., 1890, p. xliii.
" "	Dec. 13, 1900	" " 1902, p. xv.
" "	Dec. 21, 1900	Can. Gazette, 30th March 1907.
Uruguay	Mch. 26, 1884	Acts of Can., 1884-5, p. xxxvi.
"	Mch. 26, 1891	" " 1892, p. lx.

THE YUKON ACT.

[R. S., (1906), c. 63.]

The principal provisions of the *Yukon Act*, with regard to the administration of criminal law, are the following:—

Sec. **63. Procedure in criminal cases.** — The procedure in criminal cases in the Territorial Court shall subject to any

(99) Not applicable to extradition between British and Portuguese India.

(100) Tongan subjects escaping to British territory.

YUKON ACT.—*Continued.*

Act of the Parliament of Canada, conform as nearly as may be to the procedure existing in like cases in the North West Territories on the 13th day of June 1898.

2. No grand jury shall be summoned or sit in the Territory.

Sec. **64. Powers of Judge.** — Every judge of the Court shall have and may exercise the powers of a justice of the peace, or of any two justices of the peace, under any laws or ordinances in force in the Territories.

Sec. **65. Summary trial.** — Every such judge may in a summary way, and without the intervention of a jury, hear, try and determine any charge against any person of having committed in the Yukon Territory the offence of,—

(*a*) theft or attempt to steal, or obtaining money or property by false pretenses, or unlawfully receiving stolen property in any case in which the value of the whole property, alleged to have been stolen, obtained or received, does not, in the opinion of such judge, exceed $200; or,

(*b*) unlawfully wounding or inflicting any grievous bodily harm upon any other person, either with or without a weapon or instrument; or,

(*c*) indecent assault on any female, or on a male person under the age of fourteen years, when such assault, if upon a female, does not, in his opinion, amount to an assault with intent to commit rape; or,

(*d*) escaping from lawful custody or committing prison breach, or assaulting, resisting or wilfully obstructing any judge or any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer.

Sec. **66. Trial with jury.**—When any person is charged with a criminal offence not within the next preceding section, and which is not otherwise by any law summarily triable without the consent of the accused, the charge shall be heard, tried and determined by the judge with the intervention of a jury.: Provided that in any case the accused may, with his own consent, be tried by a judge in a summary way and without the intervention of a jury.

Sec. **67. Jury of six.**—In any case of trial with the intervention of a jury, the jury shall be composed of six jurors.

See sec. 72 as to jury challenges.

See secs. 89 to 94 as to police magistrate and their jurisdiction; and see secs. 102 to 104 as to criminal appeals.

ADULTERATION ACT AMENDMENT ACT, 1907.

(6 and 7 Edw. VII., c. 4).

Sec. 1. Paragraph (*f*) of section 2 of the Adulteration Act, chapter 133, of R. S. 1906, is repealed and the following is substituted therefor:—

"(*f*) 'Analyst' means public analyst, and includes any member of the examining board appointed under the authority of this Act, and also the chief analyst and the assistant chief analyst."

Sec. 2. Section 8 of the said Act is repealed and the following is substituted therefor:—

"8. The Governor in Council may appoint one or more persons as public analysts to analyse food, drugs, agricultural fertilizers and other articles, and may also appoint a chief analyst and an assistant chief analyst.

"2. The Governor in Council may assign a public analyst to a particular district and may fix the territorial limits of such district.

"3. The chief analyst, the assistant chief analyst and such other public analysts as the Governor in Council directs, shall be attached to the staff of the Department of Inland Revenue at Ottawa.

"4. The assistant chief analyst shall have the same powers as are conferred by this Act upon the chief analyst."

Sec. 3. Section 15 of the said Act is repealed and the following is substituted therefor:—

"15. The officer purchasing any article with the intention of submitting it to be analysed shall, after the completion has been completed, forthwith notify the seller or his agent selling the article of his intention to have it analysed by a public analyst, and shall, except in specific cases respecting which special provisions may be made by the Governor in Council, divide the article into three parts, to be then and there separated, and each part to be marked and sealed up or fastened up as its nature permits.

"2. Such officer shall deliver one of such parts to the seller or his agent if required by him so to do; he shall transmit another of such parts to the Minister for submission to the chief analyst or the assistant chief analyst in case of appeal; and he shall submit the remaining part to such public analyst as the Minister or Deputy Minister or any person duly authorized in that behalf directs."

Sec. 4. Section 16 of the said Act is repealed, and the following is substituted therefor:—

"16. The person from whom any sample is obtained under this Act may require the officer obtaining it to annex, to the vessel or

package containing the part of the sample which he is thereby required to transmit to the Minister, the name and address of such person, and to secure, with a seal or seals belonging to him, the vessel or package containing such part of the sample and the address annexed thereto, in such manner that the vessel and package cannot be opened, or the name and address taken off without breaking such seals; and the certificate of the chief analyst or of the assistant chief analyst shall state the name and address of the person from whom the said sample was obtained, that the vessel or package was not open, and that the seals securing to the vessel or package the name and address of such person were not broken until such time as he opened the vessel or package for the purpose of making his analysis; and in such case no certificate shall be receivable in evidence unless there is contained therein such statement as above or a statement to the like effect."

PROCLAMATION BRINGING PART III. OF THE CRIMINAL CODE INTO FORCE.

On the 10th of June 1907, the Governor General, (by proclamation published in the *Canada Gazette* of the 22nd of June 1907), proclaimed and declared that, from and after the 15th of June 1907, all the provisions of Part III., (101), of the Criminal Code, as amended, except sections 144 to 149, (102), shall be in force within the following limits, that is to say: "All those portions of the provinces of Manitoba, Ontario and Quebec lying, in the province of Manitoba, within five miles, in the provinces of Ontario and Quebec, (except in the provisional judicial district of Rainy River), within twenty miles, and, in the provisional judicial district of Rainy River, within ten miles, on each side of the located line, and including the line itself, of the National Transcontinental Railway, from the limits of the town of St. Boniface, in the province of Manitoba, easterly to the Quebec Bridge across the River St. Lawrence, in the said province of Quebec, but not including incorporated cities and towns."

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(101) Part III. relates to the Preservation of Peace in the vicinity of Public Works.

(102) Sections 144 to 149 relate to the seizure of weapons near Public Works.

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